

(22,329.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 403.

JOHN L. JAMES, BANKRUPT, APPELLANT,

*vs.*

STONE & COMPANY, CREDITOR, AND A. G. RICAUD,  
TRUSTEE IN BANKRUPTCY OF JOHN L. JAMES,  
BANKRUPT.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE FOURTH CIRCUIT.

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UNITED STATES OF AMERICA, ss:

At a United States Circuit Court of Appeals for the Fourth Circuit, begun and held at the Court House, in the City of Richmond, on the first Tuesday in May, being the third day of the same month, in the year of our Lord one thousand nine hundred and ten.

Present:

Hon. Nathan Goff, Circuit Judge;  
Hon. J. C. Pritchard, Circuit Judge;  
Hon. Benjamin F. Keller, District Judge.

Among other- were the following proceedings, to-wit:

No. 967.

JOHN L. JAMES, Bankrupt, Appellant,  
versus

STONE & COMPANY, Creditor, and A. G. RICAUD, Trustee in Bankruptcy of John L. James, Bankrupt, Appellees.

Appeal from the District Court of the United States for the Eastern District of North Carolina, at Wilmington.

In Bankruptcy.

Be it remembered that heretofore, to-wit; on the 5th day of March, 1910, the transcript of the record of the said District Court in the said entitled cause was transmitted to and filed in our said Circuit Court of Appeals here, which is as follows, to-wit:

(a)



POOR COPY



# TRANSCRIPT OF RECORD.

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UNITED STATES OF AMERICA, }  
EASTERN DISTRICT OF NORTH CAROLINA. }

At a Court of Bankruptcy, for the Eastern District of North Carolina, held at the United States Court Room in the City of Wilmington, on the 9th day of February, A. D., 1910.

Present: the Honorable Henry G. Conner, Judge of the District Court of the United States for the Eastern District of North Carolina.

Among other were the following proceedings, to-wit:

In the matter of }  
John L. James, } No. 141. In Bankruptcy.  
Involuntary Bankrupt. }

Hearing on appeal from judgment rendered by the court in refusal to grant application for discharge of bankrupt,

In re }  
John L. James, }  
Involuntary Bankrupt. }

Adj'd Fall Term, 1909. Feby. 19, 1910. Petition of bankrupt that he may be allowed to give bond and appeal from ruling of District Judge, as to refusal to grant discharge.

Order allowing bankrupt to file bond in the sum of \$250 and allowed to appeal from said ruling, received, entered and filed. Bond filed.

## CREDITORS' PETITION.

To the Honorable Thomas R. Purnell, Judge of the District Court of the United States for the Eastern District of North Carolina:

(3) The petition of R. R. Stone, B. O. Stone and M. J. Corbett, co-partners trading under the name and style of Stone

and Company, of Wilmington, North Carolina, and S. P. McNair of Wilmington, North Carolina, and the Rheinstein Dry Goods Company, corporation, created under the laws of the State of New Jersey and doing business at Wilmington, in said State, respectfully shows:

That John L. James, of Duplin County, State of North Carolina, has for the greater portion of six months next preceding the date of the filing of this petition had his principal place of business and has resided at a place commonly known as Deep Bottom, in the County of Duplin and State and District aforesaid, where he has engaged in a general mercantile business consisting of the purchase and sale of goods and merchandise, and owes debts to the amount of \$1,000.00.

That your petitioners are creditors of said John L. James, having provable claims amounting in the aggregate, in excess of securities held by them, to the sum of \$500.00. That the nature and amount of your petitioners claims are as follows:

Stone and Company—Open account for goods sold and delivered. Amount \$3,296.09 with interest from November 4, 1907—S. P. McNair—Open account for goods and merchandise sold and delivered—Amount \$200.53, with interest from Nov. 4, 1907—Rheinstein Dry Goods Company—Open account for goods sold and delivered—Amount \$122.87 with interest from Nov. 4, 1907—

And your petitioners further represent that said John L. James, is insolvent, and that within four months next preceding the date of this petition the said John L. James committed an act of bankruptcy, in that he did heretofore, to-wit, on the fourth day of November, A. D., 1907, execute and deliver to one Robert James a deed of general assignment for the benefit of his creditors.

And your petitioners further represent, upon information and belief, that the said John L. James, within four months next preceding the date of this petition, did remove or cause to be removed a large quantity of goods and merchandise from the store wherein he conducted the mercantile business aforesaid, (4) and that he did conceal or caused to be concealed the goods and merchandise so removed in various swamps and other places near to his place of business with the intent to hinder, delay or defraud his creditors.

Wherefore your petitioners pray that service of this petition with a subpoena, may be made upon said John L. James, as provided in the acts of Congress relating to bankruptcy, and

that he may be adjudged by the court to be a bankrupt within the purview of said Acts.

R. R. STONE, B. O. STONE and M. J. CORBETT,  
Co-partners trading as Stone & Co.,

By R. R. STONE,

S. P. McNAIR,

THE RHEINSTEIN DRY GOODS COMPANY,

By L. BLUETHENTHAL, Vice-President.

MEARES & RUARK, Attorneys.

UNITED STATES OF AMERICA, }  
Eastern District of North Carolina, } ss:

R. R. Stone, one of the members of the co-partnership of Stone and Company, S. P. McNair, and L. Bluethenthal, Vice-President, of the RheinSTEIN Dry Goods Company, corporation, being three of the petitioners above named, do hereby make solemn oath that the statements contained in the foregoing petition, subscribed by them, are true, except as to the matters and things therein alleged on information and belief and as to those matters and things they believe it to be true.

Before me, S. P. Collier, this 28th day of February, 1908.

[Seal]

SAM. P. COLLIER,

Clerk of the District Court of the United States for the  
Eastern District of North Carolina.

Filed February 28th, 1908.

### MARSHAL'S RETURN.

Received at Wilmington, N. C., Feb. 28th, 1908, creditors' petition, and Ex. Feb. 29th, 1908, by delivering a true copy within to John L. James, in Duplin County, at Sloans P. O.

CLAUDIUS DOCKERY,

U. S. Marshal.

By C. O. KNOX, D. M.

Marshal's fee, \$2.00

Ex— 4.10

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\$6.10

Filed March 4th, 1908.

SAM. P. COLLIER, Clerk.

**ADJUDICATION OF BANKRUPT.**

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE  
EASTERN DISTRICT OF NORTH CAROLINA.

In the matter of  
John L. James, } No. 142— In Bankruptcy.  
Involuntary Bankrupt. }  
(5).

At Wilmington, N. C., in said District, on the 11th day of March, A. D., 1908, before George H. Howell, one of the Referees in Bankruptcy for said District, the petition of Stone & Company, S. P. McNair, and the Rheinstein Dry Goods Company, all of Wilmington that John L. James be adjudged a bankrupt within the true intent and meaning of the Acts of Congress relating to Bankruptcy, having been heard and duly considered, the said John L. James, is hereby declared and adjudged bankrupt accordingly.

This 11th day of March, 1908.

GEO. H. HOWELL,  
Referee in Bankruptcy.

Filed March 11th, 1908.

S. P. COLLIER, Clerk.

**PETITION FOR DISCHARGE.**

(6)  
UNITED STATES OF AMERICA, }  
Eastern District of North Carolina, } ss:

IN THE UNITED STATES DISTRICT COURT IN AND FOR SAID  
DISTRICT, FOURTH DIVISION.

In the matter of  
John L. James, } No. 142. In Bankruptcy.  
Involuntary Bankrupt. }

Petition for Discharge.

To the Honorable Thomas R. Purnell, Judge of the District  
Court of the United States for the Eastern District of  
North Carolina:

John L. James, of Deep Bottom, in the County of Duplin,  
and State of North Carolina, in said District, respectfully rep-



resents that on the 11th day of March last past, he was duly adjudged bankrupt under the acts of Congress relating to bankruptcy; that he has duly surrendered all his property and rights of property, and has fully complied with all the requirements of said acts and of the orders of the court touching his bankruptcy.

Wherefore he prays that he may be decreed by the court to have a full discharge from all debts payable against his estate under said bankrupt acts, except such debts as are exempted by law from such discharge.

Dated this 8th day of May, 1908.

JOHN L. JAMES, Bankrupt.

# **ORDER OF NOTICE THEREON.**

Filed May 8th, 1908.

EASTERN DISTRICT OF NORTH CAROLINA, }  
County of New Hanover, } ss:

On this 8th day of May, 1908, on reading the foregoing petition it is

Ordered by the court, That a hearing be had upon the same on the 20th day of May, before Mr. Geo. H. Howell, Referee of said court at Wilmington, N. C., in said district at 11:00 o'clock in the forenoon at the U. S. Court Room; and that notice thereof be published in The Wilmington Star, a newspaper printed in said district, and that all known creditors and other persons in interest may appear at the said time and place, and show cause if any they have why the prayer of the said petitioner should not be granted.

And it is further ordered by the court, That the Clerk shall send by mail to all known creditors copies of said petition and this order, addressed to them at their places of residences as stated.

Witness the Honorable Thomas R. Purnell, Judge of the said court, and the seal thereof, at Wilmington, N. C., in said district, on the 8th day of May, A. D., 1908.

Attest:

SAM P. COLLIER, Clerk.

By . . . . ., Deputy Clerk.

[Seal of Court]

**PROOF OF PUBLICATION.***Proof of Publication of Notice.*

(7) Ben'j L. Hoskins hereby depose on oath, says that the foregoing order was published in "The Wilmington Star" on the following one day, viz:

On the 9th day of May, 1908.

BEN'J L. HOSKINS.

EASTERN DISTRICT OF NORTH CAROLINA, }  
County of New Hanover, } ss:

Wilmington, N. C., May 22nd, 1908.

Personally appeared Ben'j L. Hoskins and made oath says, that the foregoing statement by him subscribed is true.

Before me,

S. P. COLLIER,

[Seal]

Clerk United States District Court.  
(Official Character.)

**PROOF OF MAILING NOTICES.**

I hereby certify that I have on this May 8th, 1908, sent by mail 66 copies of the above order as therein directed.

S. P. COLLIER, Clerk,

By ..... , Deputy Clerk.

**SPECIFICATIONS BY STONE & COMPANY IN OPPOSITION TO GRANTING DISCHARGE.**

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE  
EASTERN DISTRICT OF NORTH CAROLINA.

In the matter of }  
John L. James, } In Bankruptcy.  
Bankrupt. }

(8) R. R. Stone, B. O. Stone and M. J. Corbett, co-partners trading under the firm name of Stone & Company, of Wilmington, in the County of New Hanover, State of North Carolina, a creditor of and interested in the estate of said John L. James, bankrupt, does hereby oppose the granting to him of a discharge

from his debts, and for the grounds of such opposition do file the following specifications:

1. That the said John L. James, bankrupt, has subsequent to the first day of the four months immediately preceding the filing of the petition in this cause transferred, removed, destroyed or concealed, or permitted to be removed, destroyed or concealed quantities of goods and merchandise belonging to him and to his estate with the intent to hinder, delay or defraud his creditors; that they are informed and believe and upon such information and belief aver that the said John L. James, bankrupt, during the months of December, 1907, and January, 1908, concealed the goods and merchandise aforesaid in the woods, in barns and other places with the intent and for the purpose aforesaid.

Wherefore, said R. R. Stone, B. O. Stone and M. J. Corbett, co-partners as aforesaid, pray the court that a discharge be not granted to said John L. James, Bankrupt.

**MEARES & RUARK,**  
Attorneys for Stone & Co.

R. R. Stone, one of the members of the co-partnership of Stone & Company, being duly sworn says that the foregoing specifications are true of his own knowledge except as to the matters and things therein alleged on information and belief, and as to those matters he believes it to be true.

**R. R. STONE.**

Sworn to and subscribed before me this 14th day of May, 1908.

**ALEX. S. HEIDE,**  
Notary Public.  
My Commission expires Feb. 4th, 1909.

Filed

**AMENDED OBJECTIONS TO DISCHARGE OF BANKRUPT.**

**IN THE DISTRICT COURT OF THE UNITED STATES FOR THE  
EASTERN DISTRICT OF NORTH CAROLINA.**

In the matter of  
John L. James, } In Bankruptcy.  
Bankrupt.

(9) R. R. Stone, B. O. Stone and M. J. Corbett, co-partners trading under the firm name and style of Stone & Company

which said partnership is engaged in Wilmington, in the County of New Hanover, State of North Carolina, and said partnership being a creditor of and interested in the estate of said Jno. L. James, bankrupt, do hereby oppose the granting to him of a discharge from his debts, and for the grounds of such opposition do file the following amended specifications:

1. That the said Jno. L. James subsequent to the first day of the four months immediately preceding the filing of the petition in this cause transferred, removed, destroyed, or concealed, or permitted to be removed, destroyed, or concealed certain of his property as follows:

2. That the said Jno. L. James, within the time aforesaid hid on a tract of land which he held as lessee and which is situated in the County of Onslow, North Carolina, goods, and merchandise consisting of shoes, tobacco, gun shells, flour, dry goods, and other articles of merchandise, as nearly as the objectors have been able to ascertain being about the sum of \$250.00 in value.

3. That the said Jno. L. James, within the time aforesaid hid in a house known as the Hardy Kenan house and located on land in the possession of one Burton, a brother-in-law to the said James, articles of merchandise as follows: 2 barrels of flour; 1 bale of homespun; 1 large box of notions; 2 cases of shoes; 4 boxes of gun shells; 2 packages of snuff; 2 boxes of snuff; 3 rolls of wrapping paper; 2 sacks of coffee, and other articles of merchandise unknown to the objectors; that the 2 boxes of notions aforesaid were worth about \$285.00. The 2 cases of shoes were worth about \$36.00. The 2 sacks of coffee were worth about \$12.00 or \$15.00. The 2 barrels of flour were worth about \$11.00. The four boxes of gun shells were worth from \$40.00 to \$50.00, and the snuff aforesaid was worth about \$12.00.

4. That said Jno. L. James, within the time aforesaid, hid at the house of W. R. Sholer, who was an employee of the said James, a barrel filled with boots and shoes and which said boots and shoes were worth about \$50.00 or \$60.00.

And the objectors further allege that the hiding and concealment of all of the aforesaid property was done by the said Jno. L. James with the intent to hinder, delay and defraud his creditors.

That the objectors have a claim against the estate of the said Jno. L. James amounting to \$3,296.09 and that the estate



is insufficient to pay said claim, but on the contrary will pay only a very small percentage of the same.

Wherefore, the objectors pray the court that the petition of the said Jno. L. James for a discharge from his debts be not allowed.

MEARES & RUARK, Attorneys.

STATE OF NORTH CAROLINA, }  
County of New Hanover. }

R. R. Stone, being duly sworn, says that he is a member of the firm of Stone & Company which consists of himself, B. O. Stone and M. J. Corbett; that he has read the foregoing specifications and that the same are true of his own knowledge except as to the matters and things therein alleged on information and belief, and as to those matters he believes them to be true.

R. R. STONE.

Sworn to and subscribed before me this 3rd day of June, 1908.

ALEX. S. HEIDE,

Notary Public.

[Seal]

My Commission expires Feb. 14th, 1909.

### ANSWER OF BANKRUPT.

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN  
DISTRICT OF NORTH CAROLINA.

In the matter of }  
John L. James, } In Bankruptcy.

(11) John L. James, answering the petition of R. R. Stone, B. O. Stone, and M. J. Corbett, co-partners trading under the firm name and style of Stone and Company, and S. P. McNair and the Rheinstein Dry Goods Company, filed in this cause, says:

That the matters and things stated and alleged therein are true, with the exception of such portion wherein it is alleged that, "the said Jno. L. James, within four months next preceding the date of this petition, did remove or cause to be removed a large quantity of goods and merchandise from the store wherein he conducted the mercantile business aforesaid, and that he did conceal or cause to be concealed the merchandise so removed, in swamps or other places near his said place of business with intent to delay or defraud his creditors," which is denied. And the said Jno. L. James alleges that, some time prior to the assignment referred to, he did have stored away merchandise

at different places, which was taken from his store and warehouse, but at no time were any goods taken from the assignee or within four months from the filing of the petition, as alleged by the petitioners.

J. L. JAMES.

STEVENS, BEASLEY, WEEKS & L. V. GRADY,

Attorneys for J. L. James.

UNITED STATES OF AMERICA, }  
Eastern District of North Carolina. }

Jno. L. James hereby makes solemn oath that the statements contained in the foregoing answer, subscribed by him, are true, except as to the matters and things therein alleged on information and belief and as to those matters and things he believes it to be true.

J. L. JAMES.

Sworn to and subscribed before me this 4th day of March, 1908.

W. J. BONEY,

[Seal]

Notary Public.

My Commission expires Sept. 7th, 1909.

Filed March 9th, 1908.

SAM. P. COLLIER, Clerk.

**BANKRUPT'S PETITION TO DISMISS SPECIFICATIONS.**

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE  
EASTERN DISTRICT OF NORTH CAROLINA.

In the matter of }  
John L. James, } In Bankruptcy.  
Bankrupt. }

(12) Jno. L. James, bankrupt, moves the court to dismiss the objections and specifications filed to petition for discharge herein for that:

Said objection and specifications do not contain allegations of fact sufficient in law to warrant the court in refusing to grant the discharge applied for.

L. V. GRADY,

STEVENS, BEASLEY & WEEKS,

Attorneys for Bankrupt.

May 20, 1908.

Filed

**EXTRACT FROM EXAMINATION OF BANKRUPT.**

(13)

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE  
EASTERN DISTRICT OF NORTH CAROLINA.

In the matter of,  
John L. James, Bankrupt. } In Bankruptcy.

At Wilmington, N. C., in the United States Court Room, on the 8th day of June, 1908, at 10:30 o'clock, A. M., the same being the time, place and hour to which the hearing on the petition of the bankrupt for his discharge and the specifications of objection thereto, was adjourned from the meeting held on the — day of May, 1908.

The objectors, Stone & Company, filed their amended specifications of objection.

The bankrupt filed his answer to the amended specifications of objection of Stone & Company.

The following extract from the examination of the bankrupt heretofore had in this matter are, by agreement of counsel, made a part of this record—to-wit:

Page 15.

Q. Mr. James, in the petition in this case, it is alleged that you carried away from your place of business, and concealed in the swamps and other places near by, goods merchandise. Is that true? A. That is true.

Q. When did you haul these goods away from your store? A. Why some of them was taken from the warehouse up the river and put in a house nearby.

Q. Well, the ones that you put in the store? A. Well, there were not but very few of them, anyway. That was sometime about the 20th or 25th of October.

Q. Just before you made your deed of Assignment. And (14) you covered them up, didn't you? A. Covered them up?

Q. Yes. Hid them? A. I did put them in the swamp.

Q. How long after you made your deed of Assignment was it before you told anybody about these goods you had in the swamp? A. Why, somewhere along about the first or 5th of January.

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Q. So that you kept those goods concealed in the swamp for two months after you made the deed of assignment? A. That is right.

Q. You did not tell your assignee? A. No, sir. He did not know anything about it.

Q. No one else knew about it? A. No one but me and my son.

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Q. Mr. James, these goods that you say were concealed; where were those goods carried? A. Down in Onslow County

Q. How much was carried in Onslow County? A. About one hundred dollars worth.

Q. Well, what was there? Was there not more than one hundred dollars worth. Was there not one hundred and fifty dollars worth that you carried to Onslow County; was there not two hundred dollars worth? A. It was less than two hundred dollars, but of course I did not take an inventory.

Q. Who helped you get those goods away? A. Oscar and Perry.

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Q. Well, you proposed to keep those goods outside of the assignment didn't you? A. Well, it liked so at that time.

Q. Well, that is what you had them concealed for, wasn't (15) it? A. It looked very much that way.

Q. You say they were concealed in Onslow County. At whose place; at your brother's place? A. No. On a place I had leased in Onslow County.

Q. Well, what other goods did you hide? A. I expect you have a list of them there. I don't remember by this time, but I think you have a list there which shows what it was.

Q. I am asking you. I want to get your statement of it. Where else were they? A. There were some at W. R. Sholer's.

Q. He was your clerk wasn't he? A. He was my clerk once, yes.

Q. Where was Sholer's place? A. In Duplin County.

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Q. Some of them were concealed in the Hardy Kenan house. A. That was on the Burton place.

Q. Mr. Burton knew they were your goods, didn't he? He knew you were trying to conceal them? A. I don't know about the concealing, but I told him to put them in there.

Q. Sholer knew you were concealing them, didn't he? A. Yes.

Q. Well now, you stated in your examination at Kenansville that some of these goods were not returned. A. There

were two trunks that were mis-placed while they were out there.

Q. Some tobacco too, wasn't there? A. Yes, sir.

Q. What was the value of the goods that were hid in the Hardy Kenan house? A. It was not very much. I will tell you (16) what it was: It was less than a two-horse wagon load.

Q. Well, what did it consist of? A. I think there were two barrels of flour and some homespun.

Q. How much homespun; how many bales of homespun were there; two or three? A. There was not any—

Q. Wasn't any? A. There may have been one bale.

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Q. There was a large box of notions, wasn't there? A. Yes.

Q. Two cases of shoes? A. Yes.

Q. Two barrels of flour? A. Yes.

Q. Four boxes of gun shells? A. Yes.

Q. Two buckets of snuff? A. I think so.

Q. What brand? A. Railroad Mills.

Q. Two packages of snuff? A. I think there was.

Q. What brand? A. The same brand; Railroad Mills.

Q. Three rolls of wrapping paper? A. I think there was.

Q. What was their value? A. I think \$1.50 or \$1.75 per roll.

Q. Two sacks of coffee? A. Yes.

Q. What was the value? A. I don't know; about twelve (17) or fifteen dollars.

Q. What was the value of that box of notions? A. I think there were two boxes of goods. They amounted to about \$285.00.

Q. Well, what was the value of the two cases of shoes? A. I disremember. I can't exactly tell you. There were two cases of shoes, but I can't tell you what they were worth.

Q. Well, what did you pay for them? A. I don't know.

Q. Who did you buy them from? A. I disremember now. About \$36.00 for the two boxes, I should say.

Q. How about the two barrels of flour? What was the value of that flour? A. I don't remember now. I suppose it was worth about \$11.00.

Q. Four cases of gun shells; what were they worth? A. I think they cost about \$12. or \$12.50 per case.

Q. How about the Railroad Mills snuff; how much does that cost a bucket? A. About \$6.00.

Q. How about the packages of snuff? A. About the same.

Q. Well, now you say these goods were at the Kenan House. What was at Sholer's house? A. A barrel of boots and shoes.



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Q. What was the value. A. It may have been \$20. for the boots.

Q. What was the value of that barrel of boots and shoes? A. It might have been \$50. or \$60.

Q. Now, did you not, in your examination at Kenansville, say that the value of those goods was \$150.00? A. I might have said so, but I do not think then they had been inventoried.

Q. You had one case of gun shells over there, didn't (18) you? And those were missing, were they not. The two trunks of shoes and dry-goods and the five caddies of tobacco and the case of dry-goods that were hid in Onslow County were not returned, were they? A. No, sir.

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Q. And it was your purpose at the time you carried them out there, and when your son knew of your carrying them out there, and assisted you in carrying them out there, to steal them from your creditors; is not that so? A. I have explained that once.

Q. Well, answer the question. A. I do not think I took that light of it exactly.

Q. Well, what did you intend to do with them, when you hid them, if you didn't intend to steal them from your creditors? A. I didn't take that view of it sir.

Q. You didn't call it stealing, but you intended to keep you creditors from getting them, didn't you? I ask you what was your intention with reference to your creditors when you took those goods and hid them, as you have admitted here today that you did? A. I knew it was not right.

Q. You knew it was not right, and your intentions were not right, were they Mr. James? A. No, they were not right.

Q. Well, what were your intentions if they were not right? A. No, they were not right at that time.

Q. Well, I ask you if it were not your purpose at the time you took your goods and hid them, to hide them from your creditors, and thereby to keep them from finding these goods and having the proceeds from the sale of these goods applied to their claims? A. Is not that so? And thereby you intended to defraud your creditors? A. I explained that.

Q. Well, answer the question. Didn't you intend to defraud your creditors? A. I didn't take that light of it then.

(19) Q. Well, tell us what light you took? A. Well, I don't know exactly what light I took, but I knew it was not right. I do not know how to answer you, but I do not think I took the view of stealing.

Q. Well, it was your purpose to defraud your creditors out of the proceeds of those goods that you hid? A. It looks a good deal along that line.

Q. Well, was not that what you intended? A. It might have been at that time.

Q. Don't you know Mr. James, that that was your intention at the time? A. Why, I do not know.

Q. It was not your intention to carry them out there and take care of them for the creditors, was it? A. No, it does not look that way.

Q. Can't you tell us what was your purpose. I ask you what did you carry those goods in the woods for and hide them? A. I took them there for my own benefit.

Q. And to deprive anyone else from getting them? A. Well, I took them there for myself.

The attorney for petitioning creditors puts in evidence the appraisers report herein, the schedule, and the Trustee's report of sales.

Roundtree & Carr, counsel for McNair & Pearsall, ask leave to join in with Stone & Company in the specifications of Objection filed by said Stone & Company, to which motion counsel for bankrupt object, and the Referee, sitting as special master, holds that under General Order No. 32, the Judge is the only one who has power to grant such leave, or to allow time to file specifications.

There being no further business before the Meeting, it was adjourned to the \_\_\_\_\_ day of \_\_\_\_\_, 1908.

GEO. H. HOWELL,

Referee in Bankruptcy.

Filed

### EVIDENCE BEFORE SPECIAL MASTER.

(20)

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE  
EASTERN DISTRICT OF NORTH CAROLINA.

In the matter of,  
John L. James, Bankrupt. } In Bankruptcy.

Pursuant to an order made by his Honor, H. G. Connor, District Judge, in the above entitled cause, on the 21st day of July, 1909, wherein the undersigned Referee, sitting as Special Master, was directed to proceed to hear the application of the above named bankrupt for his discharge and to take evidence and report the same, with his findings of fact, to this Court,

the said Referee, after due notice to all parties interested, proceeded on the 6th day of August, 1909, at ten o'clock, A. M., in the United States Court Room, at Wilmington, N. C., to take such action in the said matter as directed in said order.

Whereupon, Messrs. Mears & Ruark and Rountree & Carr, counsel for the objectors, asked that the evidence taken on the former examination of the bankrupt, or so much thereof as they may desire and particularly indicate, be used as evidence in this case. The Referee, on considering said request, permitted the same. (See Lovelin on Bankruptcy, 3rd Ed., page 804.)

Herbert McClammy, Esq., representing the Corbett Buggy Company, another objector, moved the Court that he be allowed to introduce testimony touching the matter set forth in this specification of objections to the discharge of said Bankrupt, whereupon, the following witnesses were introduced and duly sworn, to-wit: L. J. Carter, J. O. Teachey, Gabe Teachey, A. B. Teachey and A. G. Ricaud.

At this stage of the proceedings, Messrs. Stevens, Beasley & Weeks, counsel for the bankrupt and O. H. James, entered a special appearance in the proceeding, and object to the same, (21) for the reason that:

1. There has been no process served either upon Jno. L. James or O. H. James.
2. That the Court has no jurisdiction to hear and determine the matters involved in the petition of the Corbett Buggy Company.
3. That this Court has no jurisdiction over the person of the defendant, O. H. James.

Upon considering the special appearance by counsel for the bankrupt and O. H. James, and the objections hereinbefore specified, the Referee rules:

As to the first: That it is the duty of the bankrupt to attend the hearing upon his application for a discharge, without an order of Court or service of notice or process, (See Sec. 7, Clause 1 of Act, and 138 Fed. Rep., 862).

As to the second: Upon considering the second objection, the Referee rules that this Court is not the proper forum to entertain the objection set forth in the said petition, and sustains the objection of counsel for the bankrupt and O. H. James.



As to the third: The Referee holds that this Court has no jurisdiction over the person of O. H. James in the proceeding.

Counsel for the objector, the Corbett Buggy Co., thereupon asked that his witnesses be examined as tendered, and the same was accordingly done, under the objection of counsel for the bankrupt, and O. H. James, which objection was sustained by the Referee. The testimony of the witnesses following in the order hereinafter named, viz:

(22) J. O. TEACHEY, being by me first duly sworn, testified as follows:

EXAMINED by HERBERT McCLAMMY, Esq:

(NOTE: It is agreed between attorneys representing the Corbett Buggy Company and the attorneys representing the bankrupt, and O. H. James, that all the testimony of the witnesses for the Corbett Buggy Company shall be considered as objected to, said objections being sustained by the Referee.)

Q. Mr. Teachey, do you know when Jno. L. James made his assignment? A. I do not know, right now.

Q. I mean, not the date, but just the time, about the time? A. I do not, sir.

Q. Do you know he made an assignment? A. I heard he did.

Q. Do you know whether or not he had in his possession after he was declared bankrupt, a large number of buggies? A. No, sir, he got them before he got into that.

Q. He got them before he was declared a bankrupt? A. That was before I heard of it.

Q. And after he was declared a bankrupt, he still had them in his possession? A. That's what I saw the next time I seen them.

Q. State whether or not you had a conversation with Jno. L. James relative to the use of the buggies, and when that conversation was, and also state the general appearance of the buggies? A. When Marshal Teachey went over there and delivered them to him, Mr. J. L. James wasn't home that morning; his son was there. I never had any conversation with his son or Mr. James, and that day we hitched up a few of the buggies. We didn't get them all that day. We merely carried off what the team would take. That evening Mr. Marshal Teachey asked me if I wouldn't go next morning and fetch (23) another load, to get the remainder. We went over there

the next morning and the buggies were out in the road in front of Mr. James' house, and when we went to hitch up to them, to grease the axles and get them ready to pull, Mr. James asked me if I knew why this thing come about. I said I heard why it was, and he said Marshall come over and taken them out our charge and delivered them to the other side. We were loading them there separate. That's about all we said about it. Mr. James was knocking around there in good heart. I said, "Mr. James, how come this, these surries look like they are going to be hard to pull". He said, "I drove those surries down to Jacksonville and they got sprung down there."

Q. Which Mr. James was this; Mr. J. L. James or Mr. O. H. James? A. That was Mr. Jno. L. James I was talking to.

Q. And Mr. Jno. L. James said he sprung the axles on those surries in driving to Jacksonville? A. Those two surries that he said he drove over to Jacksonville, they got sprung down there.

Q. State the condition those buggies and surries were in? A. Well, the surries, the axles were sprung and looked like they was dusty and hadn't been cared for very much, and I didn't specially look over them more than that; I just done what I was hired to do.

Q. State whether or not they had the appearance of having been used? A. Those two surries did. He said he had used them, and they looked like it.

Q. Did any of the buggies have the appearance of being used? A. There was some two or three buggies there that looked like they could have been used if they had wanted to, they were in that condition; I don't know whether they had been used or not.

Q. State whether or not there was any grease on the axles of those buggies you have reference to? A. Not that I seen, but they were talking there and the boys that was greasing them said that they looked like they had been greased. The buggies I had to grease, it looked like it was the first. I didn't pull any open buggies; they was all covered top buggies (24) I drove.

Q. What condition were they in; did they look as if they had been in the weather or not? A. Some of them looked pretty bad; looked like there hadn't been any care taken of them. Yet they were under shelter when I seen them.

#### CROSS EXAMINATION.

By H. L. STEVENS, Esq., Counsel for Bankrupt:

Q. Did Mr. James tell you when he drove those surries to Jacksonville? A. No, sir, he did not.

Q. You don't know whether it was before or after the bankruptcy? A. No, sir, I don't; he didn't tell me that.

Q. You don't know whether it was before or after the assignment he made, do you? A. No, sir; he just said he drove those surries to Jacksonville and they had become sprung down there.

Q. Did you know how long they had been under that shelter; some several months, hadn't they, from their appearance? A. I don't know how long they had been there.

Q. Didn't they have the appearance of having been there for a long time? A. They were all stacked back there; looked like they had been there some little time.

Q. Wouldn't dust naturally gather upon them, and things of that sort, in a place like that? A. The dust could have gathered upon them, but some of them looked like—

Q. Well, suppose they had been there fifteen or eighteen or twenty months, couldn't the dust have blown in there on them like that? A. If it blowed it there anywhere.

Q. Well, wasn't that house right in the midst of a sandy (25) place around there and was open so the wind could blow in? A. Some of them was; some wasn't.

Q. That house of Jno L. James was right in the middle of a sandy place? A. Yes, sir, Jno L. James was on a sandy place.

Q. And I reckon the wind blows down there, as everywhere? A. Yes, sir, I expect it does.

Q. Wouldn't those buggies naturally get their share? A. Well, I don't know that it would blow like in an open field. Of course if the window was open. I don't see how they could really get in very bad shape.

Q. Did you see a single buggy that had grease on it? A. I did.

Q. Did you see it yourself? A. I heard the boys say.

Q. I am not talking about what the boys said; did you see it yourself? A. I heard the boys say so.

Q. Did you see one, I am asking you; not the ones you greased, or what other people told you? A. No, sir, I couldn't say that I saw any one.

Q. Do you know as a fact that those buggies were unloaded at Teachey and driven down there? A. I heard it.

Q. Didn't they have to grease them at Teachey to drive them down there? Ans. I suppose they might.

Q. How far is it from Teachey to Jno L. James place? A. About eleven or twelve miles.

Q. So every one of those buggies had been driven that distance, or pulled that distance; they were set up at Teachey's, weren't they? A. I suppose they were; he had a large lot of teams.

RE-DIRECT EXAMINATION.

Q. Mr. Teachey, state whether or not they had the appearance of being damaged? A. Yes, sir, some of them were damaged, it looked like to me.

Q. If they were, what was the appearance; were the tops broken or cut, or the chickens had been roosting on them, or what was the appearance? A. The chickens had been roosting in some of them, for there was lots of droppings of chickens in them—that is, some of the surries, two of them, or one; and some of the tops looked like they was about to give way.

RE-CROSS EXAMINATION.

Q. Did you see any buggy with a hole in the top of it? A. I saw where it looked like the rain had dripped through.

Q. Didn't one of them have a hole in the top, clear through? A. I am not going to say that.

Q. Didn't two of them come there with holes in the top and Jno. L. James put in a claim for them against the railroad? A. I don't know, sir.

M. L. TEACHEY, being by me first duly sworn, testified as follows:

EXAMINED by HERBERT McCLAMMY, Esq:

Q. Do you know when Jno. L. James made his assignment and was afterwards declared a bankrupt? A. About when it was, yes, sir. I think it would be about two years this next October or November.

Q. State whether or not the Corbett Buggy Company had shipped to Jno. L. James a carload of buggies? A. Yes, sir, they had shipped them.

Q. About how long before he made an assignment? A. I think it was about two weeks before he made his assignment, that they shipped them there.

Q. State what condition those buggies were in? A. Well, (27) the condition of the buggies, generally—they were in very bad condition.

Q. I am speaking about when they were shipped, Mr. Teachey. A. They were in good condition when shipped.

Q. Were they shipped new from the factory? A. Yes, sir.

Q. Were they in good condition or not? A. Yes, sir, I saw them when they came to Teachey, and they were in first-class condition.



Q. Were there any sprung axles or broken parts about them? A. Not a one that I could detect.

Q. When did you see them afterward? A. I saw them right after that, because I went over there; I saw them around there in bulk. I kind of tried to get them back, then.

Q. State whether or not you made a demand for them? A. Yes, sir, I made a demand for them then.

Q. State whether or not you got an order from the Trustee to have these buggies delivered? A. Yes, sir, I did, sometime ago.

Q. Did anyone decline to deliver them? A. Yes, sir, Mr. James and his son declined to deliver them.

Q. Then what was done? A. Was an execution issued? A. Yes, sir.

Q. After the execution was issued and the buggies turned over to you, what condition did you find the buggies in when they were turned over to you; describe them minutely to the Court. A. The condition of them was very bad in a good many ways. They were very dusty and dirty and no care taken of them and it looked as if some of them had been out in the weather for some time. Of course, I didn't see them only in the house, but the paint on the bodies of some of them was very dim and it looked like the buggies might have been used a year. We have got buggies in people's hands that don't look as bad as they did then, after being used sometime, and I don't know whether it was from being exposed for (28) some time to the sun and rain, or not.

Q. What was the damage? A. Well, I afterwards tried to sell the goods for \$20 less than the original price.

Q. Do you mean by that, \$20 on each buggy less than the factory price, the invoice price? A. Yes, sir.

Q. Why did you do that? A. Well, there was considerable damage and I felt I would do well to get that.

Q. State whether or not the buggies were shipped back to the factory? A. No, they weren't all shipped back; just half of them were shipped back. Ten buggies were shipped back, and two surries.

Q. What did you sell the buggies for, the discount of the buggies you sold, and why did you have to ship these other buggies back; state whether or not to be worked over? A. They were in very bad condition and we couldn't sell them for anything like the worth of them and we would rather take them back and make the best disposition of them we could. The best offer I could get on them was about fifty per cent., of the invoice price. The bill amounted to \$1,250 and I was offered just half of that. Another party offered me \$500.00.

Q. State whether or not the bankrupt, Jno L. James and his son, or either of them or both of them, demanded of the Cor-

bett Buggy a storage account, and if so, how much? A. Yes, they said they had made a demand on the Corbett Buggy Company in writing for \$100, I believe, storage, and said that before they turned them alose, they expected that amount.

Q. Is there anything else, Mr. Teachey, that you can think of, that you haven't stated already? A. I don't know especially that there is. Just the goods was there in very bad (29) condition for some cause.

Q. Did you see the sprung axles of those surries? A. Yes sir, I saw them.

Q. State whether or not you looked at the buggies and whether they had the appearance of being used, and what was the appearance? A. There was one top buggy had a buggy harness in it looked like it had been set up. Of course, a buggy could be used several times without great damage being done to it, if it is taken care of. Then there was several open buggies looked like they had been exposed to the sunshine or rain or had been used; nobody could tell, of course. They were very dusty and dirty and very poorly kept, unreasonably poorly kept.

Q. Did Jno. L. James ever make any claim for damages to the buggies in course of shipment? A. No, sir, I never heard anything about it.

Q. You were there when the buggies were turned over to him at Teachey's? A. Yes, sir.

Q. Were there any holes in the tops, or broken places? A. Never saw any of them.

Q. Was ever any complaint made to you as the representative of the Corbett Buggy Company that such was the case? A. No, sir, I don't recollect any.

Q. And nothing was said to you about it? A. No, sir; I happened to be out there to some church meeting or other, and nothing was ever said to me that I have any recollection of.

#### CROSS-EXAMINATION.

By H. L. STEVENS, Esq.:

Q. You say you were present when the buggies were unloaded in Teachey's? A. Well, I was around about there.

Q. They were set up and pulled over there, weren't they? A. Yes, sir, they were uncanted and pulled over; all of them (30) wasn't set up—what we would call set up.

Q. I mean the wheels were on the axles and they were pulled over there? A. Yes, sir, that's right.

Q. You saw the buggies after they were in the possession of Jno. L. James, at his place? A. Yes, sir.

Q. Where were they when you saw them at his place? A. They were under those different shelters.

Q. The same place you found them when you got them under the execution? A. The first time, I don't recollect, they was so scattered, I don't recollect whether Mr. James was there or not, and I don't remember about the buggies being scattered so at that time. I can't say positively whether they were or not.

Q. But they were under shelter at his place? A. Yes, sir, I always saw them under some sort of shelter.

Q. At the time you went over when Mr. Bob James was there just after the assignment, did you examine them at that time? A. No, sir, I did not make any examination.

Q. So you can't state whether the axles were sprung at that time or not? A. No, sir.

Q. Did you examine the buggies at that time? A. No, sir, I did not.

Q. So you couldn't state whether there was anything the matter with them or not? A. I didn't make any detailed examination to see about the buggies or not.

Q. You stated there was one buggy that had harness in it? A. Yes, sir.

Q. Didn't Mr. James have some of his own buggies under that shelter, that he had been driving? A. Possibly he might have.

Q. Wouldn't it have been a natural thing to lay the harness somewhere else than in the buggy he drove? A. Yes, sir, (31) it might have been; you understand, I haven't said that he drove that buggy.

Q. I understand you have not said he drove the buggies anywhere. A. No, sir.

Q. Didn't you make an offer to O. H. James to sell him all of these buggies at \$5 less than cost price? A. No.

Q. Didn't you make a proposition of that sort and he accepted it? A. No, sir, we thought about some kind of deal like that, \$5 or \$8, but I don't recollect about Mr. James.

Q. Didn't Jno. L. James, as representing O. H. James, make you a proposition to take these buggies at \$5 less than cost? A. Yes, sir, something like that; maybe it was \$7.

Q. And you agreed to submit the proposition to the house and let him know the next week? A. Yes, sir, I told him I would let him know. Of course, I wanted to get the best out of it I could. I saw Jno. L. James at a picnic after that, and he said he couldn't handle them at that price. In the meantime, the Company didn't agree of that kind of a proposition; that was shipped on consignment.

A. G. RICAUD, being by me first duly sworn, testified as follows:

EXAMINED by HERBERT McCLAMMY, Esq:

Q. You are the Trustee in Bankruptcy of Jno L. James?  
A. Yes, sir.

Q. Do you recall a car-load of buggies having come into your possession, or a large number of buggies, as part of the assets of Jno. L. James & Company? A. Yes, sir, twenty-two buggies and two surries, as I recall.

Q. What condition were those buggies in? A. Apparently to me they were in good condition at the time Mr. James turned them over to me.

Q. Who did you have to hold those buggies for you after you were trustee? A. I got Mr. James to hold them.

Q. What did you say to him? A. At the time I took the inventory of the stock of goods and assets, there were those buggies, in addition to other buggies. I don't know how many other buggies there were which Mr. James claimed as his property. All the buggies were under sheds. There were three different sheds or store-places. One was the large new barn, and additional barn, where a lot of them were stored, and a third shed near his store where the rest were stored, except four. There were four right back of Mr. James' store, not under cover, right up against the platform; there might have been three or five—a small number, anyhow. I suggested to Mr. James that these ought to be put under the shed, as the others were under the shed. He said he would take them and take the best care of them he could.

Q. Did you ever authorize Mr. J. L. James to use any of the buggies? A. No, sir, I never did.

Q. You were to pay him storage? A. The question of storage was not discussed by Mr. James at the time and no understanding was had between us. Subsequently, Mr. James asked me if I didn't think he was entitled to some compensation for taking care of them. I told him I thought he ought to be allowed something, and the next thing I knew, there was a bill rendered me for something over \$100. I think the bill was rendered against me and the Corbett Buggy Company, jointly; I don't remember. I have a copy of the bill in my office.

Q. Do you recollect having given an order assenting to the release of the buggies after the judgment from the Circuit Court of Appeals had come down? A. I do, sir. It directed Mr. James to turn them over to the Corbett Buggy Company.

Q. And he declined to do it, and the execution had to be (33) issued? A. That I don't know.



Q. You said when you took charge of the buggies, they were in apparently good condition? A. I examined every one of them in this way; Mr. James took me around and showed me every one of the buggies and the surries. I didn't take them out from under the sheds to examine them, they were packed closely together, but I was impressed at the time that they were in very good condition.

Q. Your attention was not called to any sprung axles on any one of them, and there was no defect in any one of them, was there? A. If any defect was called to my attention, it has entirely escaped my recollection.

#### CROSS EXAMINATION.

By H. L. STEVENS, Esq:

Q. In speaking of this matter, Mr. James was speaking for himself, or his son? A. I was talking with Mr. James, and not Mr. O. H. James at all, in any of my transactions. Mr. O. H. James was indebted to the trust, and I had notes in my possession at the time, and I was not talking with O. H. James at the time. Mr. Albert P. Farrior was present at the time of this understanding between Mr. James and myself.

Q. You say you didn't pull out the buggies yourself? A. I was simply reaching a conclusion from the general appearance. I remember that I had in contemplation at the time, the idea that some arrangement would be made, that there was some arrangement pending whereby the Buggy People were to take over the buggies and give bond, and it made me a little less attentive to the matter than I perhaps would have been.

Q. Were you informed at the time that the Buggy Company had employed O. H. James to take charge of these buggies? A. I have no recollection of any such statement, (34) and I think if such a statement had been made to me, I should have addressed my directions to Mr. O. H. James, as Mr. O. H. James was there. I know that Mr. Jno. L. James rendered me every facility and aid that he could in the matter of taking the inventory, and tried to get at the facts. Mr. O. H. James, when I first got there, claimed to be very busy on his farm and did not know whether he could get away or not, and I told Mr. Jno. L. James that if he didn't come down and help me, I would have to report the matter to the court, as he was the only man that had the cost mark and could give me the information, and Mr. James said he would try to arrange it and did arrange it, and Mr. O. H. James was very nice after that and gave me all the help he could, but as far as giving him any instructions as to the buggies, I certainly did not.

Q. No amount was agreed upon between you and Mr. James for taking care of those buggies? A. That was not discussed at that time and not for four or five or six months, after a long lapse of time and this case had gone to the Court and been hung up apparently, then the question came up.

Q. Do you remember how the buggies were fixed? Were those that were stored, did they have an awning over them or were they open—those that were in the open end of the store, did they have an awning over them or were they in the sun? A. They had no awning over them, apart from the buggy. They may have had something in the nature of a tarpaulin or something of that kind, but there was no shed or awning of that character over them.

### RE-DIRECT EXAMINATION.

By J. O. CARR, Esq:

Q. Please state if the assets of this estate are sufficient to pay the indebtedness; if not, how much elapse is there? A. The assets of the estate have paid a dividend of  $11\frac{1}{2}\%$ . Independently and exclusive of the litigation for this real estate, there will not be enough on hand and in sight to pay the actual expenses incurred against the estate. The creditors will get no more than the dividend of  $11\frac{1}{2}\%$  out of this litigation.  
(35)

L. J. CARTER, being by me first duly sworn, testified as follows:

EXAMINED by HERBERT McCLAMMY, Esq:

Q. What is your business? A. Trading horses and handling buggies.

Q. You are in the livery business, and the harness and buggy business? A. Yes, sir.

Q. Did you see these buggies? A. Yes, sir.

Q. Did you see them when they were first delivered to Jno. L. James? A. No, sir.

Q. How long after the delivery of them did you see them? A. I didn't see them until I went to Teachey. I went there with Knox once and Teachey once.

Q. You went there with the Deputy United States Marshal to put the buggies in the possession of Mr. Teachey? A. Yes, sir.

Q. What was over to the Col of those buggies, the appearance of them? A. They were pretty well shop-

(33) issued! A. That I don't knowles sprung.

Q. Did you have any conversation with Mr. Teachey relative to the sale of the buggies, or purchase of them by you? A. Yes, sir, I tried to get them from him.

Q. What did you offer him for them? A. I finally offered him fifty per cent.

Q. What did Mr. Teachey offer to take? A. He offered to take \$20 off of each job.

Q. Were the axles of those surries sprung? A. Yes, sir.

(36) Q. To what extent? A. They were pretty badly sprung.

Q. Would they have sprung coming from Teachey over to his place of business? A. I don't hardly think they would spring without somebody had been riding in them.

Q. Then your opinion is that the springing of the axle was caused by loading? A. Yes, sir.

Q. Did these surries have the appearance of having been used? A. I couldn't tell that, only from the axle. The axle being sprung was the only way I could tell.

#### CROSS-EXAMINATION.

By C. D. WEEKS, Esq.:

Q. You say these buggies appeared to be shop-worn? A. Yes, sir.

Q. You don't mean to say that any of those buggies had been driven? A. I don't know about that; I didn't say that, I said they were shop-worn.

Q. If you let a buggy stand under shelter for twenty months with dust and everything accumulating on it, wouldn't it look shop-worn? A. Yes, sir.

Q. That's a sandy country, aint it? A. Yes, sir.

#### RE-DIRECT EXAMINATION.

Q. Did you get one of the buggies? A. Yes, sir, I bought three of them.

Q. Did any of those have the appearance of being used? A. They looked really worse than if you had used them, I guess.

#### RE-CROSS EXAMINATION.

Q. By that you mean that if you put a buggy under open shelter for twenty months and don't use it at all, it will look worse than if you had used it? A. If you ran a buggy and (37) kept it brushed up, I guess it would.

Q. Did you see any signs, other than the sprung condition of those axles of these surries, that the surries had been used

A. I couldn't have told that they had used them. They were pretty badly damaged; the tops were damaged.

Q. You say if those surries had been driven over from Teachey's to his place, they might have sprung the axles if they had been loaded? A. Yes, sir, if they had been loaded.

Q. Do you know the date Mr. James made the assignment? A. I do not, sir.

Q. That was the 5th of November, I think. Do you know when he received this carload of buggies? A. I do not, sir.

Q. You have heard it said it was about three weeks before haven't you? A. I was not at home when he made the assignment.

Q. Well, you heard Mr. Teachey say it was about three weeks before he made the assignment, haven't you? A. Yes, sir.

Q. That's ample time to spring buggies, ain't it? A. It don't take but a little time to spring them if you get a load on them.

Q. So you don't know but that they may have been sprung during that period of time, do you? A. No, sir.

Q. When goods stand for a long time and become shop-worn, whether actually used or not, they are sold at a big discount, are they not? A. Well, I never have kept a buggy twenty months in my life.

Q. They are considered second-hand goods when kept that (38) long? A. To a certain extent, yes, sir.

GABE TEACHEY. (Colored) being by me first duly sworn, testified as follows:

EXAMINED by HERBERT McCLAMMY, Esq:

Q. Did you have any conversation with Mr. Jno. L. James about these buggies? A. No, sir, I didn't have no conversation with him myself. Mr. Teachey was talking to him; I was in the presence.

Q. You were in the presence of Mr. Teachey? A. Yes, sir.

Q. That was Mr. J. O. Teachey? A. Yes, sir.

Q. When was that? A. That was the last day we went back for the buggies.

Q. What did Mr. James tell Mr. Teachey about using the buggies, if anything? A. Mr. Teachey got me to go back and wanted me to pull the two-thirds, and I told him my mule was kind of weak and I would rather Mr. Teachey would take the run-about and I would take the three buggies and he



asked me how come I didn't want to take them and I said it looked like the axle was sprung so bad that the wheels would cut the rut out and Mr. James and I was talking to him, and he said "John, how come these things broke up so," and he said, "Well, I drove the damn things to Jacksonville," or something like that, and "they was sprung". Said they wasn't no 'count.

Q. That they were sprung? A. Yes, sir, that's how come I didn't want to pull them.

Q. How did they look? A. Looked mighty bad.

Q. Did they look like they had been used? A. If they hadn't been used, they took some mighty bad weather.

#### CROSS EXAMINATION.

By H. L. STEVENS, Esq:

Q. Did he say "damn"? A. Yes, sir; said the damn (39) things wasn't no 'count.

Q. He didn't say he drove the damn things? A. Said the damn things wasn't no 'count; that he had drove them to Jacksonville.

Q. Did he tell you when he drove them to Jacksonville? A. No, sir.

Q. Did he say it was in November, 1907? A. No, sir, he didn't specify when he drove them.

Q. But he didn't say he had driven the rest of them? A. No, sir; only said he drove the surries.

Q. Were the two surries' axles bent? A. Yes, sir.

Q. How was the axle on the first surry? A. The first surry pulled out from under the shelter, the axle was bent.

Q. Which axle? A. The hind axle.

Q. The front was all right? A. Yes, sir, seemed to be all right, but the hind axle was sprung.

Q. Now, take the second surry: What was the trouble with that? A. Both axles of it was sprung. That's the reason I tried it in the sand. Mr. Teschey got us to pull them out.

Q. Did you see anything else the matter with those surries, except what you described about them? A. Not only except the chickens had roosted on them.

Q. Except for that and what you described, they were all right? A. Yes, sir, except the chickens had roosted in them.

Q. About the buggies, did you see any trouble with the buggies? A. There was two of the buggies tracking sort of wrong. It might have been in the shafts, or something else, I couldn't say which.

Q. It might have been the shafts were crooked? A. Yes, sir.

Q. Anything else the matter with the others? A. Yes, sir, two of the buggies were like moths or rats had cut the (40) lining up in the top; like it had cut thru there.

Q. That was one buggy? A. Yes, sir.

Q. Did you see anything the matter with the other buggy? A. No, sir, except I didn't find but four wrenches. The one I went to use, I said to Mr. Teachey looked like it had been greased.

Q. Did you see them when they were being carried away from Teachey's by Mr. James? A. No, sir, I didn't see it.

#### RE-DIRECT EXAMINATION.

Q. Did you find any storm curtains and aprons? A. I never found but two or three.

Q. All the balance of them were gone? A. They wasn't there with the buggies. Mr. Carter bought one and he couldn't find the storm curtains.

Q. Did you find any side curtains? A. Yes, sir, we found some of them for Mr. Carter.

Q. Was that grease put on there fresh, or could you tell? A. Looked like it was old grease put on there.

Q. Did it look like it was freshly put on, or not? A. (41) No, sir, it didn't look like it was freshly put on.

M. W. TEACHEY (Recalled).

EXAMINED by HERBERT MCCLAMMY, Esq:

Q. Were all of these surries and buggies provided with aprons and side curtains? A. Yes, sir, we ship them out that way. That's the way we always ship, side curtains and storm front.

Q. Did you find any of these? A. Mighty short; best I could see was possibly three or four. And a wrench goes with every buggy, and possibly there were three or four of these.

Q. Not over three or four? A. No, sir, not that I could see.

#### CROSS EXAMINATION.

Q. Do you know whether they were sent with this lot or not? A. No, only from custom. (42)

The foregoing closes the evidence in the case for the Corbett Buggy Company.

**Continuation of the Proceedings on the Specification of Objection filed by Mess. Meares and Ruark and Rountree & Carr, as Counsel for Petitioning Creditors:**

Counsel offer in evidence, the following parts of the record:

1. Creditors petition, filed February 28, 1908.
2. Adjudication, filed March 11, 1908.
3. Petition for discharge, filed May 8, 1908.
4. Amended specifications in opposition to petition for discharge, filed June 3, 1908.
5. Inventory of Trustee, filed April 7, 1908.
6. Supplemental inventory of Trustee, filed April 13, 1908.
7. Counsel offer, also, so much of the testimony of A. G. Ricard, a witness for and on behalf of the Corbett Buggy Company, as relates to the matter of assets and liabilities of the bankrupt, as follows:

(Beginning at Question 3, page 15, re-direct examination, by J. O. Carr, Esq.).

"Q. Please state if the assets of this estate are sufficient to pay the indebtedness; if not, how much elapse is there? A. The assets of the estate have paid a dividend of  $11\frac{1}{4}\%$ . Independently and exclusive of the litigation for this real estate, there will not be enough on hand and in sight to pay the actual expenses incurred against the estate. The creditors will get no more than the dividend of  $11\frac{1}{4}\%$  out of this litigation."

8. Also, the following parts of the examination of the bankrupt, from the testimony filed on April 16, 1908, to-wit: (43) Beginning with Question 3, on page 15, to and including Question 2 and answer thereto, on page 17; also testimony beginning at Question 6, on page 51, to and including question 3 and answer thereto, on page 56; also beginning with question 3 on page 60 to the bottom of page 61, to where the examination by Mr. Davis begins.

At this stage of the proceedings, Mess. Stevens, Beasley & Weeks, counsel for the bankrupt, moved the court for a

continuance of the hearing until Monday, August 16, 1909, at ten o'clock, A. M., in the United States Court Room, at Wilmington, N. C., whereupon, counsel for objecting creditors objected to the continuance and asked for the grounds for same, and asked that counsel for bankrupt file an affidavit setting forth reasons for the continuance. Counsel for bankrupt thereupon stated that they desired certain witnesses from Duplin County to prove the fact that all the goods which the bankrupt had concealed were restored to Robert James, Assignee of the bankrupt. Upon conference between counsel for objectors and counsel for bankrupt, an agreement as to the facts relative to the return of the goods, was signed, whereupon counsel for bankrupt withdrew their motion for an adjournment to the said 16th August. The agreement is as follows:

"Admitted:

"All of said goods were returned to the assignee, except two trunks and their contents, and one lot of tobacco; that said trunks and tobacco were stolen or taken from their place of hiding, without the consent or knowledge of bankrupt.

ROUNTREE & CARR,  
MEARES & RUARK,  
Attorneys for Objectors."

Respectfully submitted,

GEO. H. HOWELL,  
Referee in Bankruptcy.

This 6th day of August, 1909.

(44)

Admitted.

All of said goods were returned to the assignee except two trunks and their contents and one lot of tobacco, that said trunks and tobacco were stolen or taken from their place of hiding without the consent or knowledge of bankrupt.

ROUNTREE & CARR,  
MEARES & RUARK,  
Attorneys for Objectors.



IN THE DISTRICT COURT OF THE UNITED STATES FOR THE  
EASTERN DISTRICT OF NORTH CAROLINA.

(45)

In the matter of  
John L. James,  
Bankrupt. }

*In re* Corbett Buggy Company claim.

Stevens, Beasley & Weeks, Attorneys for John L. James, Bankrupt, and O. H. James, hereby entered a special appearance in the proceeding and object to the same for the reason that:

1. That there as been no process served either upon John L. James, or O. H. James and no notice of this proceeding.

2. That the Court has no jurisdiction to hear and determine the matters involved in the petition of the Corbett Buggy Company.

3. That this Court has no jurisdiction over the person of the defendant O. H. James.

STEVENS, BEASLEY & WEEKS.

This August 6th, 1909.

Attorneys.

**REPORT OF SPECIAL MASTER.**

(46)

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE  
EASTERN DISTRICT OF NORTH CAROLINA.

In the matter of  
John L. James,  
Bankrupt. }

*Report of Referee sitting as Special Master on the petition of  
the Bankrupt for his Discharge.*

This was a petition in the cause filed by the above named bankrupt for his discharge from his provable debts effected by this proceeding.

The petition is in the usual form and alleges that on the 11th day of March, 1908, he was duly adjudicated bankrupt; that he had fully surrendered all of his property and rights of property and has fully complied with all of the acts of con-

gress relating to bankruptcy and of the orders of this Court touching his bankruptcy. The petition is herewith sent as a part of the record in this matter.

Stone & Company, claimants, against the estate of said bankrupt filed specification of objections to said bankrupt's Petition, of the date of the 14th of May, 1908 and asked that the prayer of the bankrupt be not granted, whereupon the bankrupt filed a motion of the nature of a demurrer for the dismissal of the said specifications, and the said objectors asked leave to amend their specifications and on their request being granted, at a meeting held on the 20th day of May, 1908, filed their amended specifications of objections. The said amended specifications avers that the said bankrupt, subsequent to the first day of the four months immediately preceding the filing of the petition in this cause, transferred, removed, destroyed or concealed, or permitted to be transferred, removed, destroyed or concealed, certain of his property to-wit:— That (47) the said bankrupt, within the time aforesaid hid on a tract of land which he held as lessee, and which is situated in the County of Onslow, N. C., goods and merchandise consisting of shoes, tobacco, gun shells, flour, dry goods and other articles of merchandise, as nearly as the objectors have been able to ascertain, of the value of \$250. that the said bankrupt, within the said time, hid in the house known as the Harvey Kenan house and located on land in the possession of one Burton, a brother-in-law of said bankrupt, two barrels of flour, one bale of homespun, one large box of notions, two cases of shoes, four boxes of gun shells two packages of snuff, two boxes of snuff, three rolls of wrapping paper, two bags of coffee, and other articles of merchandise unknown to the said objectors; that the said two boxes of notions aforesaid were worth about \$285. the two boxes of shoes about \$36, the two sacks of coffee about \$12 or \$15, the two barrels of flour about \$11.00 and the four boxes of gun shells about \$40, and the snuff about \$12. That the said bankrupt within the time aforesaid, hid in the house of W. R. Sholer, a former employee of said bankrupt, a barrel filled with boots and shoes of the value of \$40 to \$50. That the hiding and concealment of all of said property was done by said bankrupt with intent to hinder, delay and defraud his creditors; that the objectors have a claim against the bankrupt's estate in the sum of \$3,296.00 and that said estate is insufficient to pay said claim and will only pay a small percentage thereof, and prayed that the petition of said bankrupt for his discharge be not allowed.

The bankrupt denies by his answer to the said specification of objections filed by said Stone & Company, the foregoing averment and prays that the same be dismissed. The issue being raised on said pleadings, all of which are sent up

with the record herein, the undersigned sat in the United States (48) Court Room on the 8th day of June, 1908, at 10:30 o'clock in the forenoon, this being the date, place and hour to which the meeting held on the 20th day of May 1908, was adjourned, whereat the said amended specifications and answer were filed, to hear any matters in relation thereto, when the objectors offered extracts of the testimony of the bankrupt, taken on a former examination, in evidence in this matter, (minutes of the meeting held on the 8th day of June, 1908, herewith sent as a part of the record, contains the parts of the testimony offered), together with the Appraisers' report, the schedules of the bankrupt and the trustee's report of sale.

When the matter of the Discharge of the said bankrupt had progressed thus far, his Honor Thos R. Purnell the (then) judge of this Court, by an Order made in this cause, suspended any further proceedings in relation to the petition of the bankrupt, awaiting the determination of certain matters at issue between the trustee and the bankrupt and others in regard to the ownership of certain real estate which the trustee claimed as a part of the estate of said bankrupt which should come into his hands for the benefit of claimants.

On the 21st, day of July, 1909, his honor, H. G. Connor, Judge of this Court, modified the said former Order to the end that the undersigned proceed to hear the application of the bankrupt for his discharge and to take evidence and report the same, with his findings of fact, to this Court. A copy of said Order is herewith sent as a part of this record.

On the 20th day of July, A. D., 1909, the Corbett Buggy Company a claimant, filed a petition, alleging that the petitioner is a North Carolina corporation, that its principal office is at Hendersonville, N. C., that the said James was adjudicated bankrupt and that A. G. Ricand was appointed trustee of his estate, and as such officer took possession of twenty-two (49) buggies and two surries which had been delivered by the petitioner to the bankrupt a few days prior to his making an assignment for the benefit of his creditors. That the said Trustee had the bankrupt and one O. H. James, hold for him the said buggies and surries; that there arose a controversy as to the ownership of said buggies, between the petitioner and the trustee, which was decided in favor of the petitioner and against the trustee; that during the time that said bankrupt and O. H. James, were holding said buggies pending the adjudication of the controversy between the petitioner and trustee, that the said bankrupt and O. H. James allowed, (some of), buggies to be used in their general business, and the remainder to stand out in open weather or be so insecurely housed as to render the said buggies almost useless, and greatly impaired the value thereof, to the petitioner's damage in the

sum of \$750. That the petitioner is informed that the bankrupt is now applying for discharge, wherefore, it prays that the said bankrupt be not discharged and that the Referee fix a day certain when all facts and circumstances bearing on the case may be heard, and report the same to this Court. A copy of said petition is herewith sent as a part of the record—

On the reception of a copy of the said order of his honor, Judge Connor, and a copy of the petition of the said Corbett Buggy Company, notice was given to all parties of a hearing in the matter to be held on the 6th day of August, A. D., 1909, at ten o'clock A. M., in the United States Court Room, Wilmington, N. C., to take such action in the matter as directed in said Order. The memorandum of said proceedings is herewith sent as a part of the record.

Upon considering the testimony of the witnesses and the matters and exhibits in evidence in relation to the bankrupt's petition, the specifications of objections filed by Stone & Company, and the Petition of the Corbett Buggy Company, the following facts are found.

#### **Facts.**

#### ***Facts in Relation to the Petition of the Corbett Buggy Company.***

1. That on the 11th day of March 1908, J. L. James, was duly adjudicated a bankrupt, for that within four months prior thereto, he executed a deed of general assignment to one Robert James for the benefit of his creditors.
2. That at a meeting of the creditors of the said bankrupt held on the 3rd, day of March 1908, one A. G. Ricard was appointed permanent trustee of the estate of said bankrupt and duly accepted said trust and gave bond required for the faithful performance of that office.
3. That the said Trustee took into his possession, twenty-two buggies and two surries, which he found in the possession of the bankrupt upon his qualification as aforesaid.
4. That the Corbett Buggy Company demanded possession of said buggies and surries from the trustee, and that the trustee refused to deliver the same, whereupon the Corbett Buggy Company on the 30th day of April, 1908, filed its petition to this Court to have said trustee to deliver to it the said buggies (and surries). That this Court refused the prayer of the petitioner, when the Corbett Buggy Company



appealed to the Circuit Court of Appeals, which reversed the judgment of this Court, and by its mandate directed said trustee to deliver said buggies and surries to the Corbett Buggy Company. That this Court in conformity to said opinion and mandate, passed an order directing the said trustee to deliver the buggies and surries to said claimant, which was accordingly done.

5. That the said trustee, on assuming control of the said (51) buggies and surries, as set forth in the third finding above, appointed the bankrupt his agent to look after and take care of the same and that the said bankrupt accepted said appointment and undertook to look after and take care of said buggies and surries.

6. That the said trustee did not appoint O. H. James as his agent, directly or indirectly, for any purpose, in the administration of his trust.

7. That the said J. L. James, the bankrupt, undertook to, and did look after the said buggies and surries, and kept the same stored in the same manner as when turned over to him by said trustee.

8. That the said buggies claimed by the said Corbett Company were among others owned by said bankrupt prior to the assignment made by him to one Robert James on the 4th, day of November, 1907, prior to the adjudication in this proceeding, and when delivered to said bankrupt by the trustee were in apparent good condition.

9. That the bankrupt did not use any of the buggies for his own personal use in his business at any time during his agency for the trustee.

10. That some of the buggies became shopworn by exposure to dust wind and sand, and by reason thereof, about twelve were damaged to the extent of fifty per cent of their invoice price and the remaining ten buggies and two surries were shipped back to the factory in damaged condition which effected their value to the extent of twenty dollars of their invoice price.

11. That subsequent to the delivery of the surries to Jno. L. James about two weeks before his assignment of all of his property to one Robert James, said Jno. L. James used said surries in driving to Jacksonville, N. C., which said use



sprung the rear axles of one of the surries and both axles of the other.

12. That the said trustee and his agent, Jno. L. James, always kept the said Corbett Buggy Company's buggies under shelter.

*Facts in Relation to the Specifications of Objections filed by Stone and Company.*

1. That on the Petition of Stone & Company, S. P. (52) McNair, and the Rheinstein Dry Goods Company, all of Wilmington, N. C., filed the 20th day of February 1908, wherein they, after stating the formal jurisdictional facts, alleged that Jno L. James committed an act of bankruptcy, in that he did, on the 4th day of November, 1907, execute and deliver to one Robert James, a deed of general assignment for the benefit of his creditors, and further that he within four months moved, or caused to be removed from his store house a large quantity of goods, wares and merchandise; that he did sell or cause to be sold the said goods, wares and merchandise, with intent to hinder, delay and defraud his creditors.

2. That on the 9th day of March, 1908, Jno. L. James filed his answer to said petition, admitting the jurisdictional facts and the commission of the act of bankruptcy complained of, but denied the acts set forth in the petition alleging that within four months next preceding the date of the filing of the petition that he had removed or caused to be removed large quantities of goods and merchandise from his store and that he had concealed or caused to be concealed the merchandise so removed with intent to delay or defraud his creditors.

3. That on the 11th day of March, 1908, said Jno. L. James was duly adjudicated bankrupt.

4. That on the 8th day of May, 1908, said bankrupt filed his petition for his discharge from all debts provable against his estate in this proceeding.

5. That on the 14th day of May, 1908, Stone & Company, claimants filed specifications of objection to the said petition for discharge, and on the 3rd, day of June, 1908, filed amended specifications of objection, to said petition, and that the bankrupt, on the 8th day of June, 1908, filed his answer denying the allegations in the specifications of objection filed by Stone & Company.

6. That on or about the 25th, day of October, 1907, and before the bankrupt made the deed of assignment of all his property for the benefit of his creditors to one Robert James, (53) he, without the knowledge of the said Robert James, or any other person except his son, hid in a swamp in Onalow County, on land leased by him, 5 caddies of tobacco, worth about 20 cents a pound, 1 case of gun shells, two trunks of shoes and dry goods, and a case of dry goods, with intent to hinder, delay and defraud his creditors.

7. That on or about the 25th day of October, 1907, and before the bankrupt made the deed of assignment, of all of his property for the benefit of his creditors to one Robert James, he, without the knowledge of the said Robert James, or any other person except his son, hid, secreted or concealed at one W. R. Sholer's house, one barrel of boots and shoes, valued at about \$50, with intent to hinder, delay and defraud his creditors.

8. That on or about the 25th day of October, 1907, and before the bankrupt made the deed of assignment of all of his property for the benefit of his creditors to one Robert James, he without the knowledge of the said Robert James, or any other person except his son, hid, secreted or concealed in the Hardy Kenan house on the Burton place, two barrels of flour, one bale of homespun, one large box of notions, two cases of shoes, four boxes of gun shells, two packages of snuff, two buckets of snuff, three rolls of wrapping paper, and two sacks of coffee, all of the value of about \$416.25, with intent to hinder, delay and defraud his creditors.

9. That on or about the 5th day of January, 1908, one H. G. Swinson, discovered the whereabouts of the property concealed in Onalow County, when the bankrupt voluntarily disclosed the hiding place of all property concealed by him, except two trunks and their contents and one lot of tobacco, which were stolen or taken from the hiding place, without the bankrupt's knowledge or consent.

10. That the disclosure of the hiding places mentioned in the sixth, seventh and eighth findings of fact above, was made within four months of the date of the filing of the petition whereon Jno. L. James was adjudicated bankrupt.

All of which is respectfully submitted.

GEO. H. HOWELL,  
Referee in Bankruptcy.

Wilmington, N. C. this—  
day of August, 1909.

**OPINION OF DISTRICT JUDGE REFUSING DISCHARGE.  
PETITION FOR APPEAL.**

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE  
EASTERN DISTRICT OF NORTH CAROLINA.

In the matter of  
John L. James, } In Bankruptcy.  
Bankrupt.

(54) On Nov. 4, 1907, petitioner executed to Robert James a deed of assignment transferring to him all of his property for the purpose of paying his, petitioner's, debts. On Oct. 25, 1907, without the knowledge of his assignee and with the intent to defraud his creditors, petitioner, concealed, by hiding in the woods, a portion of his personal property—goods and merchandise. On January 5, 1908, the place of the concealment of the property was discovered by another person and disclosed to the assignee who took it into his possession, pursuant to and for the purposes set out in the deed of assignment. On February 28, 1908, the creditors of petitioner filed in the District Court of the United States a petition and, pursuant thereto on March 11, 1908, petitioner was adjudged an involuntary bankrupt. The proceeding in bankruptcy was conducted in accordance with the provisions of the Act. On May 8, 1908, petitioner filed his application for a discharge from his debts, provable against his estate on February 28, 1908. Certain of his creditors filed objection to this application, charging that he had, within four months prior to the filing of the petition, concealed his property with intent to defraud his creditors. The referee heard the evidence and reported the foregoing facts.

(55)

Stevens, Weeks and Beasley and Grady for petitioner; Rountree & Carr and Meares & Ruark for creditors.

CONNOR, District Judge:

The objection urged by the creditors to petitioners application for a discharge is based upon the language of Sub. Sec. 4, of Sec. 14 of the Bankrupt Act, which makes it the duty of the judge upon the petition of the bankrupt made in accordance with the provisions of the Act, to grant the discharge "unless he has at any time subsequent to the four months immediately preceding the filing of the petition, transferred, removed, destroyed or concealed his property, with intent to hinder, delay or defraud his creditors." The sole question, therefore, presented by the record is whether, having concealed his property

with the fraudulent intent on Oct. 25, 1907, petitioner continued to conceal it until January 5, 1908, the date upon which it was disclosed to and recovered by the assignee. It will be observed that the first date is four months and three days prior to February 28, 1908, upon which the petition was filed—the last date being less than two months prior thereto. It is manifest that, if an article be concealed, put in a secret or hiding place, and so remains until it is discovered, it continues until such time in a state of concealment, or is during the entire period, concealed. It is insisted by counsel for petitioner that, while this is true, the active agency of the person concealing the property is completed when it is concealed—or placed in concealment. Is the term "has concealed," as used in the statute, to be given this restricted meaning—was it so used by the legislature? The exact question has not, so far as our investigation has gone, been decided.

In *In re Jacob and Vestanding*, 147 Fed., 797, the proper interpretation of the word "concealed," as it is used in Sec. 29b of the Bankrupt Act, was considered. That section provides that "a person shall be punished by imprisonment not to exceed two years, upon conviction of the offense of having knowingly (56) and fraudulently concealed his property while a bankrupt, or after his discharge, from his trustee, Judge Wolverton says: "Subdivision 1, section 14 may be) read in connection with Sec. 29b of the Bankruptcy Act. The word "concealed" read in this connection is sufficiently elastic in its signification to comprise a "continuous concealment". In that case it was held that, where the bankrupt had, prior to his adjudication, concealed or disposed of his property and subsequent thereto retained the proceeds from his trustee, he was guilty of a misdemeanor under sec. 29b and barred of his discharge pursuant to sec. 14, which provided that he should not be entitled to it if he had committed an offense punishable by imprisonment by the bankrupt act.

In *re Quackenbush*, 102 Fed., 282, discussing the effect of a concealment under the provisions of Sec. 29b, Judge Coxe says that the essence of the offense is in placing the property in such a situation that the trustee cannot reach it, with the intent on the part of the bankrupt, not to only keep it from the creditors but to enjoy it himself, "nor is it material that the concealment proves unsuccessful, or that the trustee may recover it for the benefit of the estate."

In *United States v. Cohen et al.*, 142 Fed., 983, the defendant bankrupt, with the other defendants, was charged with a conspiracy to violate Sec. 29b by concealing his property from his trustee. There was a demurrer to this indictment. Holt, District Judge, discussing the demurrer says: "The date at which the crime is alleged to have been committed was before



the bankruptcy proceedings were begun and the substantial ground of the demurrer is that as the bankrupt act does not make the act of a fraudulent concealment of property a crime if committed before the proceedings in bankruptcy are begun, a conspiracy to commit such an Act entered into before the bankruptcy is not a crime, . . . . . Sec. 29b, of the bankrupt Act (57) provides that it is a crime for a person to knowingly and fraudulently conceal, while a bankrupt, from his trustee, any of the property belonging to his estate in bankruptcy. This provision of the bankrupt act does not make an act of the bankrupt, before the bankruptcy, a crime but, if the bankrupt, before the bankruptcy, has concealed his property and after his trustee is appointed continues to conceal from the trustee, he is criminally liable under this section and if indicted for such crime evidence of his acts of concealment before the bankruptcy, as well as by those subsequent thereto, would undoubtedly be admissible as a part of the *res gestae*." While not strictly in point, these expressions clearly recognize that, the word "concealed" has sufficient elasticity to comprise a "continuous concealment." Of course as the act is *quasi* penal in respect to the consequences flowing from it, the words, if of doubtful import, should not be given a strained or unusual meaning; on the contrary, in ascertaining the legislative intent, the general scope and purpose of the entire statute should be kept in view and, so far as a reasonable construction of its terms permit, effectuated. The well settled and uniformly recognized purpose of the bankruptcy law is to secure to the creditors of an insolvent person, coming within the terms of the act, a full and honest disclosure and an equitable distribution of his property and this being accomplished, to give to the honest debtor a full discharge. This two fold purpose should be kept in view in construing and enforcing the provisions of the statute. It is not a matter of discretion with the judge to grant or refuse a discharge, otherwise than as, under the terms of the statute the bankrupt is entitled thereto. It is clear that on Oct. 25, 1907, the petitioner being insolvent, and in view of committing an act of bankruptcy, fraudulently withdrew from the reach of his (58) creditors a portion of his property, in a manner clearly within the prohibitive language of the law, it is equally clear that he continued to conceal and thereby continuously withdrew from his creditors the property until January 5, 1908, and then only disclosed its concealment, because it was discovered by another person; he therefore "concealed" the property at all times up to the day of its discovery. It was, by his act, kept continued—"concealed"—thus coming within the language of the act in point of time—four months next preceding the date of the filing of the petition. It may be "hard lines" on the petitioner to strip him of his property and leave him bound for



the amount remaining due to his creditors, but by his own conduct he has subjected himself to the penalty. The application for a discharge is denied.

H. G. CONNOR,  
District Judge.

Filed Jany. 31, 1910.

### PETITION FOR APPEAL.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE  
EASTERN DISTRICT OF NORTH CAROLINA.

In the matter of  
John L. James, } In Bankruptcy.  
Bankrupt.

(59)

To the Honorable H. G. Connor, District Judge, and one of the Judges of the United States Circuit Court of Appeals for the 4th Circuit.

John L. James, the above named bankrupt, conceiving himself aggrieved by the order and judgment made and entered herein on the 31st day of January, 1910, in the above entitled proceeding, wherein and whereby it was adjudged that the said John L. James, bankrupt, was denied his discharge in bankruptcy, and he does hereby appeal from such order and judgment to the United States Circuit Court of Appeals for the 4th Circuit, for the reasons specified in the assignment of errors, which is filed herewith and herein, and he prays that this appeal may be allowed, and that a transcript of the proceedings and papers upon which said order and judgment was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the 4th Circuit.

Dated at Wilmington, North Carolina, February 2nd, 1910.

JOHN L. JAMES, Bankrupt.  
H. L. STEVENS, Solicitor.

The foregoing petition on appeal is granted and the appeal herein is allowed, and that a certified transcript of the record, papers and proceedings herein be forthwith transmitted to said United States Circuit Court of Appeals.

It is further ordered that the bond of appeal be fixed in the sum of \$250.00 for costs and damages on appeal.

H. G. CONNOR,  
United States Dist. Judge.

This bond may be increased by the appellate court for cause shown, or on its own motion.

GEO. H. HOWELL,  
Referee, etc.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE  
EASTERN DISTRICT OF NORTH CAROLINA.

**ASSIGNMENT OF ERRORS.**

In the matter of  
John L. James, } In Bankruptcy.  
Bankrupt.

(60)

Come now the Bankrupt, John L. James, by his solicitor, H. L. Stevens, and filed the following assignment of errors, upon which he will rely in the prosecution of his appeal from the decree and order made by this Honorable Court, on the 31st day of January, 1910, in the above entitled cause.

**I.**

That the United States District Court in and for the Eastern District of North Carolina erred in denying John L. James, bankrupt, his discharge upon the facts and record in the case.

**II.**

That the United States District Court in and for the Eastern District of North Carolina erred in holding that the property was kept continuously concealed until January 5th, 1908.

**III.**

That the United States District Court in and for the Eastern District of North Carolina erred in holding that a concealment from his creditors is sufficient concealment; the law being that the concealment must be from the trustee, and in this case there was no concealment from the trustee, the property having been revealed before the filing of the petition, and the trustee received all the property and the creditors having had the benefit thereof.

H. L. STEVENS,  
Solicitor for Bankrupt.

**"APPEAL BOND."**

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE  
EASTERN DISTRICT OF NORTH CAROLINA.

(61)

In the matter of  
John L. James, } In Bankruptcy.  
Bankrupt.

**Bond.**

Know all men by these presents, That we, John L. James, as principal, and John L. James and Title Guaranty & Surety Company, as sureties, are held and firmly bound to A. G. Ricaud, trustee of John L. James, bankrupt, in the sum of two hundred and fifty dollars, to which payment well and truly to be made, we bind ourselves and each of us jointly and severally and our and each of our successors, representatives and assigns, firmly by these presents.

Sealed with our seals and dated the 10th day of February, 1910.

Whereas, the above named John L. James has appealed to the Circuit Court of the United States for the Fourth Circuit to reverse the judgment denying him a discharge in the above entitled cause in the District Court of the United States for the Eastern District of North Carolina;

Now, therefore, the conditions of this obligation is such that if the above named John L. James shall prosecute his appeal to effect and answer all costs and damages if he shall fail to make good his appeal, then this obligation shall be void, otherwise to remain in full force and virtue.

J. L. JAMES,

[Seal]

TITLE GUARANTY & SURETY CO.,

[Seal]

Per A. H. PAIT, Atty. in fact,

Per C. D. WEEKS, Atty. in fact.

Approved—Feby. 11, 1910.

H. G. CONNOR, Judge

## CITATION.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE  
EASTERN DISTRICT OF NORTH CAROLINA.

In the matter of  
John L. James, } In Bankruptcy.  
Bankrupt.

United States of America to Stone & Company, Creditors, and  
A. G. Ricaud, Trustee—John L. James, Bankrupt—Greeting:

(62) You are hereby cited and admonished to be and appear before a United States Circuit Court of Appeals for the Fourth Circuit, to be holden in the City of Richmond, in the District and Circuit above named, on the 7th day of March, 1910, pursuant to an appeal filed in the Clerk's Office of the District Court of the United States for the Eastern District of North Carolina, wherein John L. James is the appellant and you are the appellee, to show cause, if any there be, why the judgment and order in said appeal mentioned should not be reversed and speedy justice should not be done in that behalf.

Given under my hand in the City of Richmond in the District and Circuit above named, this 4th day of February, in the year of our Lord one thousand nine hundred and ten, and of the Independence of the United States one hundred and thirty-five.

H. G. CONNOR,  
United States District Judge.

Service accepted.

THE STONE CO.,  
A. G. RICAUD, Trustee.



**MEMORANDUM OF COUNSEL AS TO RECORD TO BE  
COPIED.**

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE  
EASTERN DISTRICT OF NORTH CAROLINA.

(63)

In the matter of  
John L. James, } No. 142. In Bankruptcy.  
Bankrupt.

You will take notice that the appellant and the appellee, in the above entitled cause have agreed that the following papers and no others may constitute the record on appeal to the Circuit Court of Appeals, to-wit:

Creditors petition with marshal's returns,  
Petition of bankrupt for discharge,  
Adjudication of bankrupt, with proof of publication and mailing notice to creditors,  
Specification by Stone & Company—opposition to discharge of bankrupt,  
Amended specifications by Stone & Company—opposition to discharge of bankrupt,  
Answer of bankrupt,  
Bankrupt's petition to dismiss specifications,  
Extracts of examination of bankrupt, as offered before the master or referee,  
Extracts of examination of bankrupt,  
Admission of counsel,  
Report of special master,  
Opinion of District Judge—refusing discharge,  
Petition for appeal and order allowing same,  
Assignment of errors,  
Appeal bond,  
Citation,  
Memorandum of counsel as to record to be sent.

**STEVENS, BEASLEY & WEEKS,**  
Attorneys for Jno. L. James, Bankrupt.  
**MEARES & RUARK,**

March 3rd, 1910.

Attorneys for Stone & Company.

\_\_\_\_\_  
Attorneys for A. G. Ricaud, Trustee.



## CLERK'S CERTIFICATE.

UNITED STATES OF AMERICA,  
Eastern District of North Carolina. } ss:

(64) I, Sam P. Collier, Clerk of District Court of the United States for the Eastern District of North Carolina, do hereby certify the foregoing is a true transcript of the record and proceedings in said court, in the matter of the petition of John L. James, bankrupt, in bankruptcy, as directed in writing by the counsel for the appellant and which herein appears.

In testimony whereof, I hereunto set my hand affix  
{Seal of} seal of the said District Court, at the City of Wil-  
{Court} mington, this 4th day of March, 1910.

SAM. P. COLLIER,  
Clerk United States District Court.

And on the same day, to-wit, March 5, 1910, the appearance of H. L. Stevens and Henry R. Miller is entered for the appellant.

And on another day, to-wit, March 25, 1910, twenty copies of the printed record are filed.

And afterwards at the May Term, 1910, of our said Circuit Court of Appeals, to-wit, on the 19th day of May, 1910, the cause came on to be heard and was argued by counsel for the appellant, (no counsel appearing and no brief being filed for the appellees) before Goff and Pritchard, Circuit Judges, and Keller, District Judge, and submitted.

Afterwards, at the same term, to-wit, on the 16th day of July, 1910, the Court here announced and filed its opinion, which is as follows, to-wit:

*Opinion.*

Filed July 16, 1910.

United States Circuit Court of Appeals, Fourth Circuit.

No. 967.

JOHN L. JAMES, Bankrupt, Appellant,  
versus

STONE & COMPANY, Creditor, and A. G. RICAUD, Trustee in Bankruptcy of John L. James, Bankrupt, Appellees.

Appeal from the District Court of the United States for the Eastern District of North Carolina, at Wilmington.

In Bankruptcy.

(Argued May 19, 1910; Decided July 16, 1910.)

Before Goff and Pritchard, Circuit Judges, and Keller, District Judge.

Henry R. Miller and H. L. Stevens for appellant; no appearance for appellees.

This is an appeal from a judgment of the District Court of the United States for the Eastern District of North Carolina, sitting as a court of bankruptcy.

It appears that on the 25th of October, 1907, and for some time prior thereto, the petitioner was engaged in the mercantile business at Deep Bottom, in the County of Dublin, State of North Carolina, and continued in that business until the 4th day of November, 1907; that on the 25th of October, 1907, petitioner made a general assignment for the benefit of his creditors, and one Robert James was

appointed trustee under the deed of assignment. It further appears that without the knowledge of any person, except his son, the petitioner hid, secreted and concealed certain property to which reference will hereafter be made, amounting in value to about \$50.00. On the 28th of February, 1908, Stone & Co., and other creditors of the petitioner, filed their petition in involuntary bankruptcy against the petitioner, alleging that within four months next preceding February 28th, petitioner had committed an act of bankruptcy by executing and delivering on the 4th day of November, 1907, a deed of general assignment, and, upon information and belief, had, within four months next preceding February 28th, 1908, removed or caused to be removed from his store house a large quantity of goods and had concealed or caused to be concealed said goods in various swamps or other places with intent to hinder, delay, and defraud his creditors, and praying that he be adjudged a bankrupt, and said petition was served upon John L. James on the 29th of February, 1908; that on the 8th day of March, 1908, petitioner filed his answer to said petition denying that within four months next preceding the date of the petition (February 28th, 1908), he had removed or caused to be removed or concealed or caused to be concealed any merchandise with intent to hinder, delay, or defraud his creditors as alleged, and, while admitting that, prior to the fourth of November, 1908, he had taken some merchandise from his store and warehouse and stored it away in different places, he denied that this merchandise had been taken from his assignee (Robert James) or that it had been taken within four months next preceding February 28th, 1908. The petitioner was duly adjudged a bankrupt March 11, 1908. On May 8th, 1908, the petitioner filed his petition for a discharge from bankruptcy in due form, and the hearing was set for May 20, 1908. By specifications of objections and amendments thereof under dates of May 4, 1908, and June 3, 1908, respectively, Stone & Co., creditors of the bankrupt, opposed his discharge upon the ground that four months preceding the filing of their petition, to-wit, February 28, 1908, the petitioner with intent to hinder, delay, and defraud his creditors, had transferred, removed, destroyed, or concealed, sundry articles of merchandise (specified); and on May 20, 1908, the petitioner filed his petition to dismiss said specifications as being insufficient in law to warrant the court in refusing a discharge.

At this stage of the proceedings, the then Judge of the District Court entered an order suspending further proceedings to await the determination of certain matters at issue in regard to certain real estate claimed as part of the bankrupt's estate.

By an order entered July 21, 1909, the court modified the aforesaid order, and directed George H. Howell, Esq., as special master, "to hear the application of the bankrupt for his discharge and to take evidence and report the same, with his findings of fact to the court." Upon hearing, on January 31, 1910, the court entered an order refusing to grant the bankrupt a discharge.

Upon the foregoing statement of facts, the court below held that the concealment of the goods of the bankrupt on October 24th, 1907,

was a continuous concealment extending to January 5, 1908, within the four months immediately preceding the filing of the petition herein; that said concealment was a concealment from the trustee and that, therefore, the bankrupt was not entitled to a discharge.

*PRITCHARD, Circuit Judge:*

It is insisted by counsel for appellant that inasmuch as the petitioner had concealed a portion of his property more than four months next preceding the filing of the petition, he thereby became exempt from the provisions of the Bankruptcy law relating to the concealment of the property of the bankrupt, notwithstanding the fact that he continued to keep the property in question concealed until within the four months' period next preceding the filing of the petition. The purpose of the Bankruptcy Law is to secure fair treatment for both creditor and debtor, and ample provision is made by which an honest debtor may, upon compliance with the provisions of the law, secure a discharge from his debts and thus be enabled to start life anew.

The question naturally arises as to whether the petitioner in this case has complied with the law, or, on the other hand, whether he has done that which the law forbids.

The referee finds the following facts as respects his conduct:

"\* \* \* 6. That on or about the 25th day of October, 1907, and before the bankrupt made the deed of assignment of all his property for the benefit of his creditors to one Robert James, he, without the knowledge of the said Robert James, or any other person except his son, hid in a swamp in Onslow County, on land leased by him, 5 caddies of tobacco, worth about 20 cents a pound, 1 case of gun shells, two trunks of shoes and dry goods, and a case of dry goods, with intent to hinder, delay and defraud his creditors.

"That on or about the 25th day of October, 1907, and before the bankrupt made the deed of assignment, of all his property for the benefit of his creditors to one Robert James, he, without the knowledge of the said Robert James, or any other person, except his son, hid, secreted or concealed at one W. R. Sholer's house, one barrel of boots and shoes, valued at about \$50, with intent to hinder, delay and defraud his creditors.

"That on or about the 25th day of October, 1907, and before the bankrupt made the deed of assignment of all of his property for the benefit of his creditors to one Robert James, he without the knowledge of the said Robert James, or any other person except his son, hid, secreted or concealed in the Hardy Kenan house on the Burton place, two barrels of flour, one bale of homespun, one large box of notions, two cases of shoes, four boxes of gunshells, two packages of snuff, two buckets of snuff, three rolls of wrapping paper, and two sacks of coffee, all of the value of about \$416.25, with intent to hinder, delay and defraud his creditors.

"That on or about the 5th day of January, 1908, one H. G. Swinson discovered the whereabouts of the property concealed in Onslow County, when the bankrupt voluntarily disclosed the hiding place

of all the property concealed by him, except two trunks and their contents and one lot of tobacco, which were stolen or taken from the hiding place, without the bankrupt's knowledge or consent."

Sub-section 4 of section 14 of the Bankruptcy Law provides that it shall be the duty of the judge, upon the petition of the bankrupt made in accordance with the provisions of the Act, to grant a discharge, unless petitioner, "at any time subsequent to the first day of the four months immediately preceding the filing of the petition transferred, removed, destroyed, or concealed, or permitted to be transferred, removed, destroyed, or concealed any of his property with intent to hinder, delay, or defraud, his creditors."

Thus it will be seen that a debtor who conceals his property with intent to hinder, delay, or defraud his creditors during the four months' period is not entitled to a discharge. It is the purpose of this provision to prevent dishonest and unscrupulous debtors from imposing upon the public.

The findings of fact by the referee show that, within the four months' period, the property of the petitioner was concealed, and that such concealment was fraudulent and with intent to hinder and delay the creditors of the petitioner in the collection of their debts. While in the first instance the act of concealment was more than four months next preceding the filing of the petition, nevertheless it is undisputed that the concealment was continued until within the four months' period, with the consent and acquiescence of the petitioner, and for a fraudulent purpose, thus bringing this case clearly within the purview of the statute. To hold otherwise would be to open wide the door for the commission of fraud by those who may be actuated by a desire to evade the payment of their honest debts.

Suppose that, in this instance, there had been no discovery of the concealed property until the day of the filing of the petition for a discharge and it had then been discovered that the property had been concealed and that fact had been made to appear, would the judge, under such circumstances, be justified in granting a discharge? We think not.

A bankrupt, in order to be entitled to a discharge, must come into court with clean hands and show that his conduct has been that of an honest, upright man. But, under the circumstances of this case, it cannot be reasonably insisted that a court of justice should, by its decree, proclaim to the public that one who concealed his goods for the purpose of defrauding his creditors, had dealt fairly with his fellowman and that such an individual is entitled to the benefits of an act intended to promote honesty and fair-dealing.

We have carefully considered the briefs filed by the appellant, but are of opinion that the cases relied upon are not applicable to the case at bar. For the reasons hereinbefore stated, the judgment of the lower court is affirmed.

And on the same day, to-wit, July 16, 1910, the Court made and entered the following decree, to-wit:



*Decree.*

Filed and Entered July 16, 1910.

United States Circuit Court of Appeals, Fourth Circuit.

No. 967.

JOHN L. JAMES, Bankrupt, Appellant,  
vs.

STONE & COMPANY, Creditor, and A. G. RICAUD, Trustee in Bankruptcy of John L. James, Bankrupt, Appellees.

Appeal from the District Court of the United States for the Eastern District of North Carolina.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of North Carolina, and was argued by counsel.

On consideration whereof, It is now here ordered, adjudged, and decreed by this Court, that the decree of the said District Court, in this cause, be, and the same is hereby, affirmed, with costs.

J. C. PRITCHARD.

July 16th, 1910.

And on another day, to-wit, August 13, 1910, the mandate of this Court is issued and transmitted to the said District Court of the United States for the Eastern District of North Carolina, at Wilmington, in due form.

*Petition of Appellant for an Appeal to the Supreme Court of the United States.*

Filed Aug. 13, 1910.

In the United States Circuit Court of Appeals, Fourth Circuit, at Richmond, Va.

In Bankruptcy.

JOHN L. JAMES, Bankrupt, Appellant,  
vs.

STONE & Co., Creditor, and A. G. RICAUD, Trustee for John L. James, Bankrupt, Appellees.

John L. James, Bankrupt, the appellant in the above entitled cause, feeling himself aggrieved by the final decree made and entered therein on the 16th day of July 1910, does hereby appeal from said final decree of the 16th day of July 1910, to the Honorable

Supreme Court of the United States, for the reasons specified in his assignments of error filed herewith; and he prays that this, his appeal, may be allowed and that a transcript of the record, proceedings and papers upon which said final decree was made, duly authenticated, may be sent to the said Honorable Supreme Court of the United States.

And your petitioner will ever pray, etc.

JOHN L. JAMES, *Bankrupt*.  
By H. L. STEVENS AND  
HENRY R. MILLER,  
*His Solicitors.*

Richmond, Va., August 10, 1910.

*Order Allowing Appeal.*

Filed Aug. 13, 1910.

Appeal allowed upon the plaintiff giving bond in the sum of \$500.00.

This August 13th, 1910.

J. C. PRITCHARD,  
*U. S. Circuit Judge.*

*Assignment of Errors.*

Filed Aug. 13, 1910.

In the United States Circuit Court of Appeals, Fourth Circuit, at  
Richmond, Va.

In Bankruptcy.

JOHN L. JAMES, Bankrupt, Appellant,  
VS.  
STONE & Co., Creditor, and A. G. RICAUD, Trustee for John L.  
James, Bankrupt, Appellees.

*Assignment of Errors.*

Comes now John L. James, Bankrupt, the appellant in the above entitled cause, by his solicitors and counsel, and assigns error in the final decree of the United States Circuit Court of Appeals, Fourth Circuit, at Richmond, Virginia, entered in said cause on the 16th day of July, 1910, as follows:

I.

That the Court erred in denying said John L. James, Bankrupt, his discharge upon the facts and record in the case.

## II.

That the Court erred in holding that the property concealed by the said John L. James on the 25th day of October, 1907, was kept in continuous concealment by said John L. James until the 5th day of January, 1908.

## III.

That the court erred in holding that the said John L. James' concealment of his property from his creditors on the 25th day of October, 1907, was a sufficient concealment, the law being that to incur the penalty the concealment must have been from his Trustee in Bankruptcy and the facts being that there was no concealment from the Trustee in Bankruptcy, that the hiding places of the concealed goods were revealed by said James before the petition in bankruptcy was filed and that the trustee in bankruptcy received all the concealed property except a small portion that was stolen from the place of concealment without the knowledge of said James and the proceeds thereof were distributed among the creditors of the Bankrupt.

## IV.

That in view of the fact that the statute imposes the penalty only for the fraudulent act of concealment and not for the results of the act, whether effectual or otherwise, and sharply defines the limits of time within which the fraudulent act must be done in order to impose the penalty upon the doer of the act, the Court erred in holding that although the original act and only act of concealment was done on the 25th day of October, 1907, more than four months prior to the filing of the petition in bankruptcy, yet, inasmuch as the goods, so concealed, on the 25th day of October, 1907, remained in concealment until the 5th day of January, 1908, this date being within the four months immediately proceeding the filing of the petition, the said John L. James, Bankrupt, was liable to the penalty imposed upon the commission of the act and not entitled to his discharge.

## V.

That the Court erred in holding that the fraudulent act of concealment was committed at a time subsequent to the first day of the four months immediately preceding the filing of the petition.

Wherefore, the said John L. James, Bankrupt, prays that the aforesaid decree of the United States Circuit Court of Appeals, Fourth Circuit, at Richmond, Virginia, entered on the 16th day of July 1910, in the above entitled cause, be reversed and corrected.

H. L. STEVENS AND  
HENRY R. MILLER,  
*Solicitors for John L. James, B'k't.*

Richmond, Va., August 10, 1910.

*Appeal Bond.*

Filed Aug. 15, 1910.

Know all men by these presents, That we, H. L. Campbell, as principal, and Fidelity and Deposit Company, of Maryland, as surety, are held and firmly bound unto Stone & Company, Creditor and A. G. Ricaud, Trustee of John L. James, Bankrupt, in the full and just sum of Five Hundred Dollars to be paid to the said Stone & Company, Creditor, and A. G. Ricaud, Trustee of John L. James, Bankrupt, their certain attorneys, executors, administrators, or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this fifteenth day of August, in the year of our Lord one thousand nine hundred and ten.

Whereas, lately at a term of the United States Circuit Court of Appeals, Fourth Circuit, at Richmond, Virginia, in a suit depending in said court, between said John L. James, Bankrupt, appellant, and said Stone & Company, Creditor and A. G. Ricaud, Trustee of John L. James, Bankrupt, appellees, a decree was rendered against the said John L. James, Bankrupt, appellant, as aforesaid, on the 16th day of July, 1910, and the said John L. James, Bankrupt, having obtained an appeal to reverse the decree in the aforesaid suit, and a citation directed to the said Stone & Company, Creditor, and A. G. Ricaud, Trustee of John L. James, Bankrupt, citing and admonishing them to be and appear at the Supreme Court of the United States, at Washington, D. C., within thirty days from the thirteenth day of August, 1910, the date of said citation;

Now, the condition of the above obligation is such, That if the said John L. James, Bankrupt, shall prosecute his said appeal to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

H. L. CAMPBELL. [SEAL.]

FIDELITY AND DEPOSIT COMPANY  
OF MARYLAND,By LEON M. NELSON, *Att'y in Fact*, [SEAL.]By SIGMUND HUTZLER, *Agent*. [SEAL.]

[Seal of the Fidelity &amp; Deposit Company of Maryland.]

Sealed and delivered in presence of

CLAUDE M. DEAN,

*Dep. Clerk U. S. Cir. Court of Appeals, 4th Circuit.*

Approved by

J. C. PRITCHARD,

*U. S. Circuit Judge.*

Aug. 19th, 1910.



In the United States Circuit Court of Appeals, Fourth Circuit, at  
Richmond, Virginia.

In Bankruptcy.

JOHN L. JAMES, Bankrupt, Appellant,

vs.

STONE & Co., Creditor, and A. G. RICAUD, Trustee for John L.  
James, Bankrupt, Appellees.

UNITED STATES OF AMERICA, ss:

To Stone & Co., Creditor, and A. G. Ricaud, Trustee for John L.  
James, Bankrupt, Greeting:

You are hereby cited and admonished to be at a Supreme Court  
of the United States at Washington, D. C., within thirty days from  
the date hereof, pursuant to an appeal filed in the Clerk's Office of  
the United States Circuit Court of Appeals, Fourth Circuit, at Rich-  
mond, Virginia, wherein John L. James, Bankrupt, is an appellant  
and you are the appellees, to show cause, if any there be, why the  
judgment and order in said appeal mentioned should not be reversed  
and speedy justice should not be done in that behalf.

Witness the Honorable John M. Harlan, Acting Chief Justice  
of the United States, this 13th day of August, in the year of our  
Lord one thousand nine hundred and ten.

J. C. PRITCHARD,  
U. S. Circuit Judge.

Service of the above citation is hereby accepted Aug. 20th, 1910.  
A. G. RICAUD, Trustee.

Service by copy accepted this Aug. 20, 1910.

MEARES & RUARK,  
Att'ys for Stone & Co.

[Endorsed:] John L. James, B'k't, vs. Stone & Co., Creditor, &c.  
Citation. Original.

Order to Transmit Record.

And thereupon, it is ordered by the Court here that a transcript  
of the record and proceedings in the cause aforesaid, together with  
all things thereunto relating, be transmitted to the Supreme Court  
of the United States,—and the same is transmitted accordingly.

Teste:

HENRY T. MELONEY, Clerk,  
By C. M. DEAN, Dep. Clk.

*Clerk's Certificate.*

UNITED STATES OF AMERICA, ss:

I, Henry T. Meloney, Clerk of the United States Circuit Court of Appeals for the Fourth Circuit, do certify that the foregoing is a true transcript of the record and proceedings in the therein entitled cause as the same remains upon the records and files of the said Circuit Court of Appeals.

In testimony whereof I hereto set my hand and affix the seal of the said United States Circuit Court of Appeals for the Fourth Circuit, at Richmond, on this 24th day of August, A. D., 1910.

[Seal United States Circuit Court of Appeals, Fourth Circuit.]

HENRY T. MELONEY,  
*Clerk U. S. Circuit Court of Appeals, Fourth Circuit,*  
By C. M. DEAN, *Dep. Clk.*

Endorsed on cover: File No. 22,329. U. S. circuit court appeals, 4th circuit. Term No. 403. John L. James, bankrupt, appellant, vs. Stone & Company, creditor, and A. G. Ricaud, trustee in bankruptcy of John L. James, bankrupt. Filed October 1st, 1910. File No. 22,329.

# In the Supreme Court of the United States of America

OCTOBER TERM, 1912.

No. 142.

JOHN L. JAMES,

APPELLANT,

*against*

STONE & CO., Creditors and }  
A. G. RICAUD, Trustee of }  
John L. James, Bankrupt, }

APPELLEES,

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## BRIEF ON BEHALF OF APPELLANT.

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Statement of the Case.

### I.

On the 28th day of February, 1908, Stone & Company and other creditors of appellant filed in the United States District Court for the Eastern District of North Carolina, in which district appellant was then residing, their petition in involuntary bankruptcy against appellant, alleging that within four months next preceding said 28th of February, 1908, appellant had committed an act of bankruptcy by executing and delivering on the 4th day of November, 1907, to one Robert James a deed of general assignment for the

benefit of his creditors and also alleging, upon information and belief, that appellant within four months next preceding said 28th of February, 1908, had removed, or caused to be removed from his store house a large quantity of goods and had concealed, or caused to be concealed the said goods in various swamps and other places near his place of business, with the intent to hinder, delay or defraud his creditors and praying that he be adjudged a bankrupt, a copy of which petition was duly served on appellant on the 29th day of February, 1909. (Rec. pp. 2 and 3).

## II.

On the 8th day of March, 1908, appellant filed his answer to said petition of his creditors, denying that "within four months next preceding the date of the petition," (the 28th of February, 1908, that being the petition's date and the date of filing), he had removed, or caused to be removed, or concealed, or caused to be concealed, merchandise with the intent, as alleged, and, while admitting that prior to the 4th of November, 1907, he had taken from his store and warehouse merchandise and stored it away in different places, he denied that this merchandise had been taken from his assignee, Robert James, or that it had been taken within the period of four month next preceding the 28th of February, 1908, and in other respects admitted the allegations of the petition, (Rec. pp. 9 and 10).

## III.

On the 11th of March, 1908, the appellant was duly adjudged a bankrupt on petition of his creditors and on the 8th of May, 1908, he filed his petition for discharge in due form and the hearing of same was set for the 20th of May, 1908, and notice and publication thereof duly given and made, (Rec. pp. 4-6).



## IV.

By specifications of objections and amendment thereof under the dates of 14th of May, 1908, and 3rd of June, 1908, respectively, said Stone & Company, creditors as aforesaid, opposed appellant's discharge upon the ground that subsequently to the first day of the four months immediately preceding the filing of their petition, on the 28th day of February, 1908, appellant with the intent to hinder, delay and defraud his creditors, had transferred, removed, destroyed or concealed or permitted to be transferred, removed, destroyed or concealed sundry articles of merchandise specified, (Rec. pp. 6 and 9), and on the 20th of May, 1908, appellant filed in said proceeding in bankruptcy, his petition to dismiss said specifications as being not sufficient in law to warrant the court in refusing the discharge, (Rec. p. 10).

## V.

By an order entered on 21st of July, 1909, the Judge of the District Court directed a Special Master, "to hear the application of the bankrupt for his discharge and to take evidence and report the same with his findings of fact to the Court," and by his report, dated August, 1909, said Special Master in respect to the alleged conduct of the bankrupt, (this appellant), reports as follows:

"6. That on or about the 25th day of October, 1907, and before the bankrupt made the deed of assignment of all his property for the benefit of his creditors to one Robert James, he, without the knowledge of said Robert James, or any other person, except his son, hid in a swamp in Onslow County, on land leased by him, 5 caddies of tobacco, worth about 20 cents a pound, 1 case of gun shells, two trunks of shoes and dry goods and a case of dry goods, with the intent to hinder, delay and defraud his creditors."

"7. That on or about the 25th day of October, 1907, and before the bankrupt made the deed of assignment of all of his property for the benefit of his creditors to one Robert James, he, without the knowledge of the said Robert James, or any other person, except his son, hid, secreted or concealed at one W. R. Sholer's house, one barrel of boots and shoes, valued at about \$50.00, with intent to hinder, delay and defraud his creditors."

"8. That on or about the 25th day of October, 1907, and before the bankrupt made the deed of assignment of all of his property for the benefit of his creditors to one Robert James, he, without the knowledge of the said Robert James, or any other person, except his son, hid, secreted or concealed in the Hardy Kenan House on the Burton Place, two barrels of flour, one bale of homespun, one large box of notions, two cases of shoes, four boxes of gun shells, two packages of snuff, two buckets of snuff, three rolls of wrapping paper, and two sacks of coffee, all of the value of about \$416.25, with intent to hinder, delay and defraud his creditors."

"9. That on or about the 5th day of January, 1908, one H. G. Swinson, discovered the whereabouts of the property concealed in Onslow County, when the bankrupt voluntarily disclosed the hiding place of all property concealed by him, except two trunks and their contents and one lot of tobacco, which were stolen or taken from the hiding place, without the bankrupt's knowledge or consent."

"10. That the disclosure of the hiding place mentioned in the sixth, seventh and eight findings of fact above, was made within four months of the date of the filing of the petition whereon Jno. L. James was adjudged bankrupt."

And by agreement between counsel it was admitted that:

"All of said goods were returned to the assignee except two trunks and their contents and one lot of tobacco; that said trunks and tobacco were stolen, or taken from their

place of hiding, without the consent, or knowledge of bankrupt." (Rec. p. 32).

### HISTORY OF THE CASE.

On the 31st day of January, 1910, the cause came on to be heard upon the record showing the foregoing facts and the Honorable H. G. Connor, Judge of said District Court, held that the concealment of the goods by the appellant on the 25th day of October, 1907, was a continuous concealment, extending to the 5th day of January, 1908, within four months immediately preceding the filing of the petition, and that the appellant, therefore, was not entitled to a discharge and denied his application therefor, (Rec. pp. 40 and 43), and an appeal having been allowed in February, 1910, appellant from this decision of the District Court, a certified copy of the record and of all proceedings in the case was duly transmitted to the United States Circuit Court of Appeals for the 4th Circuit, and on the 19th day of May, 1910, the appeal by your appellant from the aforesaid decision came on to be heard and was argued by Counsel for appellant before the Honorable Judges Goff, Pritchard and Keller of said Circuit Court of Appeals, and thereafter on the 16th day of July, 1910, the said Circuit Court of Appeals rendered and filed an opinion and decision affirming the aforesaid decision of the District Court, 175 Fed. 894.

• From said decision of the said Circuit Court of Appeals an appeal was allowed by said Circuit Court to this Honorable Court and bond given on the 13th day of August, 1910, and on said day the appellant through his Counsel filed the following assignment of errors:

### ASSIGNMENT OF ERRORS.

Comes now John L. James, Bankrupt, the appellant in the above entitled cause, by his solicitors and counsel, and

assigns error in the final decree of the United States Circuit Court of Appeals, Fourth Circuit, at Richmond, Virginia, entered in said cause on the 16th day of July, 1910, as follows:

I.

That the Court erred in denying said John L. James, Bankrupt, his discharge upon the facts and record in the case.

II.

That the Court erred in holding that the property concealed by the said John L. James on the 25th day of October, 1907, was kept in continuous concealment by said John L. James until the 5th day of January, 1908.

III.

That the Court erred in holding that the said John L. James' concealment of his property from his creditors on the 25th day of October, 1907, was a sufficient concealment, the law being that to incur the penalty the concealment must have been from his trustee in Bankruptcy and the facts being that there was no concealment from the Trustee in Bankruptcy, that the hiding places of the concealed goods were revealed by said James before the petition in bankruptcy was filed and that the Trustee in Bankruptcy received \*all the concealed property except a small portion that was stolen from the place of concealment without the knowledge of said James and the proceeds thereof were distributed among the creditors of the Bankrupt.

IV.

That in view of the fact that the statute imposes the penalty only for the fraudulent act of concealment and not for



the results of the act, whether effectual or otherwise, and sharply defines the limits of time within which the fraudulent act must be done in order to impose the penalty upon the doer of the act, the Court erred in holding that although the original act and only act of concealment was done on the 25th day of October, 1907, more than four months prior to the filing of the petition in bankruptcy, yet, inasmuch as the goods so concealed on the 25th day of October, 1907, remained in concealment until the 5th day of January, 1908, this date being within the four months immediately preceding the filing of the petition, the said John L. James, Bankrupt, was liable to the penalty imposed upon the commission of the act and not entitled to his discharge.

V.

That the Court erred in holding that the fraudulent act of concealment was committed at a time subsequent to the first day of the four months immediately preceding the filing of the petition.

Wherefore, the said John L. James, Bankrupt, prays that the aforesaid decree of the United States Circuit Court of Appeals, Fourth Circuit, at Richmond, Virginia, entered on the 16th day of July, 1910, in the above entitled cause, be reversed and corrected.

H. L. STEVENS and  
HENRY R. MILLER,  
Solicitors for John L. James, Bankrupt.

Richmond, Va., August 10, 1910.

## ARGUMENT.

The single question of law in this case arises out of the proper interpretation and construction of sub. sec. b. of sec. 14 of the Bankruptcy Act, which, so far as is applicable here, reads as follows:

"The judge shall hear the application for discharge, \* \* \* and discharge the applicant, *unless he has, \* \* \* at any time subsequent to the first day of the four months, immediately preceding the filing of the petition, transferred, removed, destroyed, or concealed any of his property, with intent to hinder, delay or defraud his creditors.*"

And the question is this:

Was the concealment, that was made and completed with fraudulent intent by the appellant, on the 25th of October, 1907, just four months and three days prior to the filing of the petition, *a continuous concealing*, an offense that of its own motion and without further action by the offender repeated itself every day after the 25th of October, 1907, until the disclosure on the 5th of January, 1908, and thus brought itself within the period prescribed by the statute, so as to deprive the appellant of his right of discharge?

This question was raised and argued in said District Court and Circuit Court of Appeals and decided in the affirmative by both of said Courts.

The question is presented in its two phases, as follows:

1. *As to the meaning of the words "he has concealed, etc."*

In defining offenses by the words "has transferred, removed, destroyed, or concealed," the statute describes cer-

tain definite, completed acts and fixes the penalty therefor, when said offenses are once committed within the time specified, but in no sense does it make said offenses continuous without further action of the offender.

The words used are plain, definite, well understood and wholly without uncertainty, or ambiguity. The form of expression denotes completed action at a definite time and not continuous, or attempted action.

An exact equivalent of the words of the statute, so far as they define the acts, is found in the words, "*Unless he has made a transfer, removal, destruction, or concealment of any of his property,*" and this equivalent emphasises the fact that the statute defines completed acts, as bars to the discharge, and in such way that a single act, once completed, is not of itself to be construed as a continuous, or repeated act.

Sub. sec. b of sec. 14, enumerates the several offenses that will bar the discharge and sub. sec. a of sec. 3, names the several acts of bankruptcy, the corresponding acts and offenses being described in substantially the same language, and in each case the completed act is the thing aimed at and there is no suggestion that any one of said acts, or offenses, may in itself be construed as being continuous.

In sec. 1. par. (22) of the Act, it is declared that "*Conceal*" shall include secrete, falsify and mutilate and, in par. (25) of same section, that "*transfer*" shall include the sale and every other and different mode of disposing of or parting with property, or the possession of property, absolutely or conditionally, as a payment, pledge, mortgage, gift or security, and these definitions would seem to determine and fix the limits of the flexibility or elasticity to be given the words "*conceal*" and "*transfer*" in the bankruptcy Act.

The statute penalizes the completed act, within the time and with the fraudulent intent, aforesaid, without regard to its success, or failure, whether the fraudulent purpose has

been accomplished or not. The fraudulent act is punished without reference to *its result* in the particular instance.

Judge Connor (rec. p. 41), quoting from 102 Fed., 282, says: "Nor is it material that the concealment proves unsuccessful or that the trustee may recover it for the benefit of the estate."

It was held, In Re Brown, 140 Fed., 383, that the bankrupt was entitled to his discharge notwithstanding the fact that he had within the four months and with fraudulent intent, made and delivered a transfer of his property, which transfer proved ineffective and void only because it did not conform to the State statute.

In the case last cited, the prohibited act *had not been completed*, although the attempt was made with fraudulent intent and, therefore, the statutory penalty was not imposed.

From the words of the statute, the exact form of expression and the context, it seems certain that the four offenses, described in par. (4) of sub. sec. b sec. 14, and made bars to a discharge, to-wit, the fraudulent and unlawful transfer, removal, destruction or concealment, within the time specified, are put upon the same footing in all respects, so that no interpretation can be made as to one that is not equally applicable as to the others, and if an interpretation is made as to one that is not equally applicable as to the others, such interpretation must be wrong.

If a bankrupt makes and completes a fraudulent destruction, or transfer of his property that is the end of it and it cannot be said that by the original act alone he continues to destroy or transfer property, simply because the property remains destroyed or transferred; nor can it be said that by the single definite completed act of unlawfully concealing his property, he repeats that offense every day, so long as *as the results* of the original and only concealment continue.

The Circuit Court of Appeals cited no cases in its opinion and it is presumed that reliance was had upon the cases cited



by the learned Judge of the District Court, which are, as follows:

In Re: Jacobs & V., 147 Federal, 797;  
In Re: Quackenbush, 102 Federal, 282;  
*U. S. v. Cohn*, 142 Federal, 983;

and while these cases appear to have been rightly decided, upon an examination thereof, it is clear that they do not support the opinion and decree aforesaid.

In the first case, In Re: Jacobs, *supra*, the discharge was refused because the bankrupt had committed the offense of concealing a part of his estate from his trustee in bankruptcy, punishable under sec. 29. The evidence shows that the bankrupt, shortly before the bankruptcy, had concealed or converted into money a part of his goods with fraudulent intent and that in his sworn schedules he did not include such goods, or money, and thereby concealed the same from his trustee in bankruptcy. It was shown that the bankrupt was in possession of certain valuable goods shortly before the bankruptcy; that neither the goods nor the proceeds thereof were accounted for in the schedule of the bankrupt, and that conflicting and unsatisfactory accounts of same were given by the bankrupt upon his examination, and it was inferred and decided by the court, that, as neither the goods nor the proceeds were listed in the schedules, the bankrupt had, at the time of filing the schedules, concealed said property from his trustee in bankruptcy and was not entitled to a discharge.

In the second case, In Re: Quackenbush, *supra*, it was held that the bankrupt was not entitled to his discharge, because in his voluntary petition he did not disclose the true facts in regard to certain property that he had, some years before filing the petition, fraudulently transferred, though still retaining the control, use and enjoyment of same; it being considered that such deficiency and failure in his pe-

tion was an act of concealment, while he was a bankrupt.

The case of *U. S. v. Cohn, supra*, was a criminal prosecution under sec. 29 for concealing property from the trustee in bankruptcy, and it was found that the bankrupt had conspired with others to bring about the bankruptcy proceedings, and had in view thereof removed and concealed property and in carrying out the conspiracy had *purposely omitted* the same from his schedules in bankruptcy and, therefore, that such omission of said property was a concealment punishable under the statute.

The gist of all these cases is not that there was a continuing concealment, but that the concealment immediately prior to the bankruptcy and the omission of the concealed property from the schedules in bankruptcy, showed conclusively that the bankrupt had concealed property from his trustee in filing his schedules.

In the case at bar there is no claim that the bankrupt concealed from his trustee in bankruptcy on the 28th February, 1908, at the time of filing the petition, or subsequently, any part of his estate, or that the trustee in bankruptcy did not get every part of the bankrupt's estate that was in existence at the time of the filing of the petition. His honor, Judge Connor (rec. p. 40), says: "the proceeding in bankruptcy was in accordance with the provision of the Act," and this implies that the bankrupt, as required by sec. 7, prepared, made oath to and filed in court within ten days after the adjudication a schedule of his property showing the amount and kind of same, etc., etc., and did all other things that were required of him by the Act, and as far as the record shows, there was never any complaint or objections to what he had done or failed to do in this respect.

2. *As to the period of limitation prescribed by the statute.*

Under sec. 14, sub-sec. b, p. (4), the acts that prevent a discharge are carefully limited, as to the time of the doing

thereof, by the words, "*at any time subsequent to the first day of the four months*, immediately preceding the filing of the petition."

By sub-sec. b, sec. 3, there is a general limitation of four months in respect to the acts of bankruptcy described in sec. 3. sub-sec. a, par. (1) and par. (1) of sub-sec. b, of said sec. 3, explains, with great particularity, how the four months limitation is extended in respect to a fraudulent transfer, or a general assignment, as acts of bankruptcy.

These are the only provisions of limitations in respect to the acts of bankruptcy and the grounds for refusing a discharge and it is a just interpretation of the statute to say that if it had been intended that the several periods of limitation were to be subject to extension and alteration, that intention would have been made clear.

The limitation of time provided for the benefit of the bankrupt in par. (4), sub-sec. b, of sec. 14, is rigidly fixed and cannot be extended by giving any forced, or strained meaning to the words, "transferred, removed, destroyed or concealed."

Appellant fraudulently concealed a part of his property on 25th of October, 1907, made a general assignment for the benefit of his creditors to Robert James, trustee, on the 4th of November, 1907; some of the concealed goods were discovered on the 5th of January, 1908, and appellant then revealed to his trustee, Robert James, the places where all the goods were hidden, and Robert James, trustee, recovered for the trust, all the goods that had been hidden, except a small portion thereof that had been stolen from the place of concealment without the knowledge of appellant; the creditors filed their petition in involuntary bankruptcy on the 28th of February, 1908, against the appellant here, and the trustee in bankruptcy, A. G. Ricaud, received from the trustee, Robert James, trustee, the entire estate, and the appellant here, the bankrupt below, did everything that was required of him by the Bankrupt Act, and there was no con-

cealment whatever from the trustee in bankruptcy, A. G. Ricaud.

With great respect for said District Court, and Circuit Court of Appeals, it must be insisted that when they decided that the said concealment on the 25th of October, 1907, was a *continuous concealment*, they confounded the *unlawful act* with the *injurious results* of that act.

*Mrs. y. Kamel 173 Fed. Rep. 828*  
In *United States v. Clark Irvine*, 8th Otto, 450 (98 U. S., 450.) *Mr. y. Phillips 196 Fed. Rep. 579*

By an indictment found in September, 1875, in the United States Circuit Court for the District of Minnesota, it was charged that the defendant on the 20th day of December, 1870, as the agent and attorney of Mrs. Berkley, wrongfully withheld from her the amount of her pension collected by defendant and continuously withheld it until the time of finding the indictment in September, 1875.

The defendant pleaded the statute of limitations of two years, as a bar to the indictment and the Circuit Court refusing him the benefit of the bar on trial, certified to this Court, among other questions, the following:

(2) Is the crime a continuous one down to the time of finding the indictment?

(3) Does the statute of limitations constitute a bar to this prosecution, that indictment having been found September 15, 1875?

On appeal this Court after discussing what constitutes a withholding of a pension under the statute, further says:

"But whatever this may be which constitutes the criminal act of withholding, it is a thing which must be capable of proof to a jury, and which, when it once exists, renders the party liable to indictment.

"There is in this but one offense. When it is committed, the party is guilty and is subject to criminal prosecution, and

from that time, also, the statute of limitations applicable to the offense begins to run.

"It is unreasonable to hold that twenty years after this he can be indicted for wrongfully withholding the money and be put to prove his innocence after his receipt is lost, and perhaps the pensioner is dead; but the fact that his receipt of the money is matter of record in the pension office.

"He pleads the statute of two years, a statute which was made for such a case as this; but the reply is: You received the money. | You have continued to withhold it these twenty year; every year, every month, every day, was a withholding, within the meaning of the statute.

"We do not so construe the Act. Whenever the act or series of acts necessary to constitute a criminal withholding of the money have transpired, the crime is complete, and from that day the statute of limitations begins to run against prosecution.

"In the case before us, the judges certify that it appeared on the trial that the pensioner demanded her money of defendant on the 24th of December, 1870, and he refused to pay her, and had never paid her up to the finding of the indictment, September 15, 1875; that he requested the judge to instruct the jury to acquit him, because the offense was barred by the statute of limitations, which the Court refused to do.

"We think the statute, R. S., sec. 1044, was a bar; and we say in answer to the second question, that the crime, as shown in this case, was not a continuous one to the time of the indictment; and to the third, that the statute of limitations constitutes a bar to this prosecution."

In the case just cited, it was held that the statute of limitations began to run, as soon as the crime was completed and so, in the case at bar, when the appellant had unlawfully made the concealment on the 25th of October, 1907, the offense was then complete and, no other act of concealing



having been alleged against him, the only offense was committed on the 25th of October, at a time prior to and outside of the period prescribed by the statute, and appellant is not thereby deprived of his right of discharge.

3. *As to the aim and objects of the Bankruptcy Act and the application of the limitations, as to the time, therein contained.*

"The National Bankruptcy Act is remedial and should be interpreted reasonably and according to the fair import of its terms, with a view to effect its object and to promote justice."

*Blake, etc., v. Francis-Valentine Co.*, 89 Fed., 691.

"No one can become familiar with the bankruptcy law of 1898, without a settled conviction that the two dominant purposes of the framers of that Act, were: (1) the protection and discharge of the bankrupt; and (2) the distribution of the unexempt property which the bankrupt owned four months before the filing of the petition in bankruptcy against him, share and share alike, among his creditors.

"All the earlier sections of the Act are devoted to the security and relief of the bankrupt, and when the distribution of his property is reached, the provisions relating to it are drawn from the standpoint of the insolvent and not from that of his creditors. The rights and privileges of the bankrupt, and the equal distribution of his property dominate every provision, while the rights, wrongs, benefits and injuries of his creditors are always incidental, and secondary to these controlling purposes."

*Swarts v. Fourth National Bank*, 117 Federal, 1.

"A Federal statute has more than a local application and, until construed by the Supreme Court, cannot be said to have an established meaning."

*Calhoun, G. M. Co. v. Ajax, G. M. Co.*, 182 U. S., 499.

"When the bankrupt files his petition for a discharge the only facts, pleadable in opposition thereto are those that show that under the provisions of sec. 14, he is not entitled to a discharge. In other words, it must be shown that he has committed some one of the offenses described; otherwise, the judge *shall* discharge the applicant."

*In Re: Marshall Paper Co.*, 102 Fed., 874.

"Shall" ought undoubtedly to be construed as meaning "must" for the purpose of sustaining or enforcing an existing right.

*Railroad v. Foley*, 94 U. S., 103.

Insofar as the creditors in this case seek to defeat the appellant's plea of limitation under par. (4), sub-sec. b, sec. 14, of the Act, and to penalize him by preventing his discharge, the appellant is entitled to all the benefits of the settled constructions of statutes of limitations and of penal or quasi penal statutes.

"Statutes of limitations are statutes of repose and should not be evaded by a forced construction."

*U. S. v. Hodge*, 13 Howard, 478.

"The statute of limitations is entitled to the same respect as other statutes and ought not to be explained away."

*Clementson v. Williams*, 8 Cranch, 72.

The statute set up by creditors is undoubtedly penal and it is a well settled rule of law that penal statutes are to be construed strictly.

*U. S. v. Hall*, 10 U. S., 171.  
*American Fur Co. v. United States*, 31 U. S., 364.  
*Johnson v. Southern Pacific Co.*, 117 Fed., 462.  
*United States, v. Morrissey*, 32 Fed., 147.

This rule of strict construction applies also to all statutes which impose as punishment any penalties pecuniary or otherwise.

*Farmers Natl. Bank v. Deering*, 91 U. S., 29.

And such statutes ought not to be extended beyond their obvious meaning.

*United States v. Willberger*, 18 U. S., 76.  
*United States v. Huggett*, 40 Fed., 634.  
*United States v. Garrettson*, 42 Fed., 22.

Where there is no ambiguity there is no room for construction.

*United States v. Willberger, supra.*

"Moreover, if there was really any fraud, in the transaction, it took place more than four months prior to the proceedings in bankruptcy and it is only where there has been a fraudulent transfer of property within that period, that a discharge is barred."

In Re: Brumbaugh, 128 Federal, 973.

Respectfully submitted,  
H. L. STEVENS,  
HENRY R. MILLER,  
Attorneys for Appellant.

December 23, 1912.

21  
Bill of Jurisdiction  
FILED.

MAY 26 1911

JAMES H. McKENNEY,

CLERK.

No. ~~1000~~ ~~1000~~ 142.

Supreme Court of the United States of America.

OCTOBER TERM, 1910.

JOHN L. JAMES,

PETITIONER,

*against*

STONE & CO., Creditors, and  
A. G. RICAUD, Trustee of  
John L. James, Bankrupt,

RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES CIRCUIT COURT OF AP-  
PEALS, FOR THE FOURTH CIRCUIT,  
AND BRIEF THEREON.





# Supreme Court of the United States of America.

OCTOBER TERM, 1910.

JOHN L. JAMES,

PETITIONER,

*against*

STONE & CO., Creditors, and  
A. G. RICAUD, Trustee of  
John L. James, Bankrupt,

RESPONDENTS.

To Messrs. Meares & Ruark,  
Attorneys & Counsel for Respondents,

Sirs:

Please take notice that upon a certified copy of the transcript of the record herein and upon the annexed petition of John L. James, sworn to the 22nd day of May, 1911, I shall move the motion hereto annexed before the Supreme Court of the United States, at the Capitol, in the City of Washington, District of Columbia, on Monday, the 29th day of May, 1911, at the opening of the Court on that day or as soon thereafter as counsel can be heard and that I shall then and there move for such further relief in the premises as may be just.

Respectfully,

H. L. STEVENS,

of Counsel for Petitioner.

Warsaw, North Carolina, 22nd day of May, 1911.

We hereby accept legal service of the above notice, with annexed copies of motion, petition for the writ of *certiorari*, and brief for petitioner, accepting service of this notice as made in due time and declaring that respondents do not desire to file a brief in opposition to said petition. Time waived as to service of this notice.

ROBERT RUARK,

Successor to Meares & Ruark  
Counsel for Respondents.

23rd May, 1911.

# Supreme Court of the United States of America.

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OCTOBER TERM, 1910.

JOHN L. JAMES,

PETITIONER,

*against*

STONE & CO., Creditors, and  
A. G. RICAUD, Trustee of  
John L. James, Bankrupt,

RESPONDENTS.

---

And now comes John L. James, the above mentioned appellant, by Samuel A. Anderson and H. L. Stevens, his counsel and attorneys, and moves this Court upon a certified copy of the transcript of the record herein and upon the annexed petition sworn to on the 22nd day of May, 1911, for a writ of *certiorari*, directed to the Circuit Court of Appeals for the Fourth District and to the District Court of the United States for the Eastern District of North Carolina, to bring before this Honorable Court the case of John L. James, bankrupt, appellant, against Stone & Company, creditors, and A. G. Ricaud, trustee of John L. James, bankrupt, appellees, recently decided by the Circuit Court of Appeals of the United States for the Fourth Circuit and by the District Court of the United States for the Eastern District of North Carolina, for such proceedings therein as to this Court may seem just; and for such other and further relief in the premises as may be just.

SAMUEL A. ANDERSON,  
of Counsel for Respondent.

# Supreme Court of the United States of America.

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OCTOBER TERM, 1910.

JOHN L. JAMES,

PETITIONER,

*against*

STONE & CO., Creditors, and  
A. G. RICAUD, Trustee of  
John L. James, Bankrupt,

RESPONDENTS.

---

PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES CIRCUIT COURT OF AP-  
PEALS, FOR THE FOURTH CIRCUIT,  
AND BRIEF THEREON.

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To the Honorables, the Chief Justice and Associate Justices of  
the Supreme Court of the United States:

The said petitioner respectfully shows to this Court, as  
follows:

## I.

On the 28th of February, 1908, Stone & Company and other creditors of petitioner filed in the United States District Court for the Eastern District of North Carolina, in which district petitioner was then residing, their petition in involuntary bankruptcy against petitioner, alleging that within four months next preceding said 28th of February, 1908, petitioner had committed an act of bankruptcy by executing and delivering on the 4th day of November, 1907, to one Robert James a deed of general assignment for the benefit of his creditors and also alleging, upon information and belief, that peti-

tioner, within four months next preceding said 28th of February, 1908, had removed, or caused to be removed from his store house a large quantity of goods and had concealed, or caused to be concealed the said goods in various swamps and other places near his place of business, with the intent to hinder, delay, or defraud his creditors and praying that he be adjudged a bankrupt, a copy of which petition was duly served on petitioner on the 29th of February, 1908, (Rec. pp. 2 and 3).

## II.

On the 8th day of March, 1908, petitioner filed his answer to said petition of his creditors, denying that "*within four months next preceding the date of the petition,*" (the 28th of February, 1908, that being the petition's date and the date of the filing), he had removed, or caused to be removed, or concealed, or caused to be concealed, merchandise with the intent, as alleged, and, while admitting that prior to the 4th of November, 1907, he had taken from his store and warehouse merchandise and stored it away in different places, he denied that this merchandise had been taken from his assignee, Robert James, or that it had been taken within the period of four months next preceding the 28th of February, 1908, and in others respects admitted the allegations of the petition, (Rec. pp. 9 and 10).

## III.

On the 11th of March, 1908, the petitioner was duly adjudged a bankrupt on petition of his creditors and on the 8th of May, 1908, he filed his petition for discharge in due form and the hearing of same was set for the 20th of May, 1908, and notice and publication thereof duly given and made, (Rec. pp. 4-6).

## IV.

By specifications of objections and amendment thereof under the dates of 14th of May, 1908, and 3rd of June, 1908, respectively, said Stone & Company, creditors as aforesaid, opposed petitioner's discharge upon the ground that *subsequently to the first day of the four months, immediately preceding the filing of their petition*, on the 28th day of February, 1908, petitioner with the intent to hinder, delay and defraud

his creditors, had transferred, removed, destroyed, or concealed or permitted to be transferred, removed, destroyed or concealed sundry articles of merchandise specified, (Rec. pp. 6 and 9), and on the 20th of May, 1908, petitioner filed in said proceeding in bankruptcy, his petition to dismiss said specifications as being not sufficient in law to warrant the Court in refusing the discharge, (Rec. p. 10).

## V.

By an order entered on 21st of July, 1909, the Judge of the District Court directed a Special Master, "to hear the application of the bankrupt for his discharge and to take evidence and report the same with his findings of fact to the Court," and by his report, dated August, 1909, said Special Master in respect to the alleged conduct of the bankrupt, (this petitioner), reports as follows:

"6. That on or about the 25th day of October, 1907, and before the bankrupt made the deed of assignment of all his property for the benefit of his creditors to one Robert James, he, without the knowledge of said Robert James, or any other person, except his son, hid in a swamp in Onslow county, on land leased by him, 5 caddies of tobacco, worth about 20 cents a pound, 1 case of gun shells, two trunks of shoes and dry goods and a case of dry goods, with the intent to hinder, delay and defraud his creditors."

"7. That on or about the 25th day of October, 1907, and before the bankrupt made the deed of assignment, of all of his property for the benefit of his creditors to one Robert James, he, without the knowledge of the said Robert James, or any other person except his son, hid, secreted or concealed at one W. R. Sholer's house, one barrel of boots and shoes, valued at about \$50.00, with intent to hinder, delay and defraud his creditors."

"8. That on or about the 25th day of October, 1907, and before the bankrupt made the deed of assignment of all of his property for the benefit of his creditors to one Robert James, he, without the knowledge of the said Robert James, or any other person



except his son, hid, secreted, or concealed in the Hardy Kenan house on the Burton place, two barrels of flour, one bale of homespun, one large box of notions, two cases of shoes, four boxes of gun shells, two packages of snuff, two buckets of snuff, three rolls of wrapping paper, and two sacks of coffee, all of the value of about \$416.25, with intent to hinder, delay and defraud his creditors."

"9. That on or about the 5th day of January 1908, one H. G. Swinson, discovered the whereabouts of the property concealed in Onslow county, when the bankrupt voluntarily disclosed the hiding place of all property concealed by him, except two trunks and their contents and one lot of tobacco, which were stolen or taken from the hiding place, without the bankrupt's knowledge or consent."

"10. That the disclosure of the hiding places mentioned in the sixth, seventh and eighth findings of fact above, was made within four months of the date of the filing of the petition whereon Jno. L. James was adjudicated bankrupt."

and by agreement between counsel it was admitted that:

"All of said goods were returned to the assignee except two trunks and their contents and one lot of tobacco; that said trunks and tobacco were stolen, or taken from their place of hiding, without the consent, or knowledge of bankrupt." (Rec. p. 32.)

It is to be further noted that there is nothing in the record showing, or tending to show that petitioner made any removal, or concealment of the goods in question, after the original removal and concealment thereof, on or before the 25th day of October, 1907, which was *four months and three days* prior to the filing of the petition against him on the 28th day of February, 1908;

And that there is nothing in the record showing, or tending to show that petitioner, in person, or by and through any one else, saw, removed, concealed, controlled or had anything whatever to do with the said concealed goods after the original removal and concealment thereof, on or before the said 25th day of October, 1907, or that petitioner made any concealment whatever from his trustee in bankruptcy.

And further that the Judge of the District Court found that "The proceeding in bankruptcy was conducted in accordance with the provisions of the Act," (rec. p. 40), which implies that the bankrupt, after the adjudication, did everything that was required of him under the Act.

## VI.

On the 31st of January, 1910, the cause came on to be heard upon the record showing the foregoing facts, and the Honorable H. G. Connor, Judge of said District Court, held that the concealment of goods by the petitioner on the 25th day of October, 1907, was a continuous concealment extending to 5th of January, 1908, within four months immediately preceding the filing of the petition and that petitioner was therefore not entitled to a discharge and accordingly denied his application therefor (rec. pp. 40-43), and an appeal having been allowed in February, 1910, to petitioner from this decision of the District Court, a certified transcript of the record and of all proceedings in the case was duly transmitted to the said United States Circuit Court of Appeals, for the Fourth Circuit, and on the 19th May, 1910, the appeal by your petitioner from the aforesaid decision of said District Court came on to be heard and was argued by counsel for petitioner before the Honorable Judges Goff, Pritchard and Keller of said Circuit Court of Appeals and thereafter, on the 16th day of July, 1910, the said Circuit Court of Appeals rendered and filed an opinion and decision, delivered by Judge Pritchard, affirming the aforesaid decision of the District Court. (175 Fed., 894.)

## VII.

From said decision of the said Circuit Court of Appeals an appeal was allowed by said Circuit Court to this Honorable Court and bond given on the 13th day of August, 1910, and on the 7th day of September, 1910, a certified transcript of the record was duly transmitted to this Honorable Court, and petitioner, not being fully advised as to what is his remedy in the premises, whether by his said appeal, or by the writ of *certiorari* herein prayed for, he will ask that both proceedings be heard together and proper relief granted him.

## VIII.

The single question of law in this case arises out of the proper interpretation and construction of sub. sec. b. of sec. 14

of the Bankruptcy Act, which, so far as is applicable here, reads as follows:

"The judge shall hear the application for discharge, \* \* \* and discharge the applicant, *unless he has, \* \* \* at any time subsequent to the first day of the four months, immediately preceding the filing of the petition, transferred, removed, destroyed, or concealed any of his property, with intent to hinder, delay or defraud his creditors.*"

and the question is this:

Was the concealment, that was made and completed with fraudulent intent by the petitioner, on the 25th of October, 1907, just four months and three days prior to the filing of the petition, *a continuous concealing*, an offense that of its own motion and without further action by the offender repeated itself every day after the 25th of October, 1907, until the disclosure on the 5th of January, 1908, and thus brought itself within the period prescribed by the statute, so as to deprive the petitioner of his right of discharge?

This question was raised and argued in said District Court and Circuit Court of Appeals and decided in the affirmative by both of said Courts.

The question is presented in its two phases, as follows:

1. *As to the meaning of the words "he has concealed, etc."*

In defining offenses by the words "has transferred, removed, destroyed, or concealed," the statute describes certain definite, completed acts and fixes the penalty therefor, when said offenses are once committed within the time specified, but in no sense does it make said offenses continuous without further action of the offender.

The words used are plain, definite, well understood and wholly without uncertainty, or ambiguity. The form of expression denotes completed action at a definite time and not continuous, or attempted action.

An exact equivalent of the words of the statute, so far as they define the acts, is found in the words,

"Unless he has made a transfer, removal, destruction, or concealment of any of his property,"

and this equivalent emphasises the fact that the statute defines completed acts, as bars to the discharge, and in such way that a single act, once completed, is not of itself to be construed as a continuous, or repeated act.

Sub. sec. b of sec. 14, enumerates the several offenses that will bar the discharge and sub. sec. a of sec. 3, names the several acts of bankruptcy, the corresponding acts and offenses being described in substantially the same language, and in each case the completed act is the thing aimed at and there is no suggestion that any one of said acts, or offenses may in itself be construed as being continuous.

In sec. 1, par (22) of the Act, it is declared that "*Conceal*" shall include secrete, falsify and mutilate and, in par. (25) of same section, that "*transfer*" shall include the sale and every other and different mode of disposing of, or parting with property, or the possession of property, absolutely or conditionally, as a payment, pledge, mortgage, gift or security, and these definitions would seem to determine and fix the limits of the flexibility or elasticity to be given the words "*conceal*" and "*transfer*" in the bankruptcy Act.

The statute penalizes the completed act, within the time and with the fraudulent intent, aforesaid, without regard to its success, or failure, whether the fraudulent purpose has been accomplished or not. The fraudulent act is punished without reference to *its result* in the particular instance.

Judge Connor (rec. p. 41), quoting from 102 Fed., 289, says: "Nor is it material that the concealment proves unsuccessful or that the trustee may recover it for the benefit of the estate."

It was held, In Re Brown, 140 Fed., 383, that the bankrupt was entitled to his discharge notwithstanding the fact that he had within the four months and with fraudulent intent, made and delivered a transfer of his property, which transfer proved ineffective and void only because it did not conform to the State statute.

In the case last cited, the prohibited act *had not been completed*, although the attempt was made with fraudulent intent and, therefore, the statutory penalty was not imposed.

From the words of the statute, the exact form of expression and the context, it seems certain that the four offenses, described in par. (4) of sub. sec. b sec. 14, and made bars to a discharge, to-wit, the fraudulent and unlawful transfer, removal, destruction or concealment, within the time specified, are put upon the same footing in all respects, so that no interpretation can be made as to one that is not equally applicable

as to the others and if an interpretation is made as to one that is not equally applicable as to the others, such interpretation must be wrong.

If a bankrupt makes and completes a fraudulent destruction, or transfer of his property that is the end of it and it cannot be said that by the original act alone he continues to destroy or transfer property, simply because the property remains destroyed or transferred; nor can it be said that by the single definite completed act of unlawfully concealing his property, he repeats that offense every day, so long as *the results* of the original and only concealment continue.

The Circuit Court of Appeals cited no cases in its opinion and it is presumed that reliance was had upon the cases cited by the learned Judge of the District Court, which are, as follows:

*In Re: Jacobs & V.*, 147 Federal, 797.

*In Re: Quackenbush*, 102 Federal, 282.

*U. S. v. Cohn*, 142 Federal, 983.

and while these cases appear to have been rightly decided, upon an examination thereof, it is clear that they do not support the opinion and decree aforesaid.

In the first case, *In Re: Jacobs, supra*, the discharge was refused because the bankrupt had committed the offense of concealing a part of his estate from his trustee in bankruptcy, punishable under sec. 29. The evidence shows that the bankrupt, shortly before the bankruptcy, had concealed or converted into money a part of his goods with fraudulent intent and that in his sworn schedules he did not include such goods, or money, and thereby concealed the same from his trustee in bankruptcy. It was shown that the bankrupt was in possession of certain valuable goods shortly before the bankruptcy; that neither the goods nor the proceeds thereof were accounted for in the schedule of the bankrupt, and that conflicting and unsatisfactory accounts of same were given by the bankrupt upon his examination, and it was inferred and decided by the court, that, as neither the goods nor the proceeds were listed in the schedules, the bankrupt had, at the time of filing the schedules, concealed said property from his trustee in bankruptcy and was not entitled to a discharge.

In the second case, *In Re: Quackenbush, supra*, it was held that the bankrupt was not entitled to his discharge, because in his voluntary petition he did not disclose the true facts in regard to certain property that he had, some years before filing



the petition, fraudulently transferred, though still retaining the control, use and enjoyment of same; it being considered that such deficiency and failure in his petition was an act of concealment, while he was a bankrupt.

The case of *U. S. v. Cohn, supra*, was a criminal prosecution under sec. 29 for concealing property from the trustee in bankruptcy and it was found that the bankrupt had conspired with others to bring about the bankruptcy proceedings, and had in view thereof removed and concealed property and in carrying out the conspiracy had *purposely omitted* the same from his schedules in bankruptcy and, therefore, that such omission of said property was a concealment punishable under the statute.

The gist of all these cases is not that there was a continuing concealment; but that the concealment immediately prior to the bankruptcy and the omission of the concealed property from the schedules in bankruptcy, showed conclusively that the bankrupt had concealed property from his trustee in filing his schedules.

In the case at bar there is no claim that the bankrupt concealed from his trustee in bankruptcy on the 28th February, 1908, at the time of filing the petition, or subsequently, any part of his estate, or that the trustee in bankruptcy did not get every part of the bankrupt's estate that was in existence at the time of the filing of the petition. His Honor, Judge Connor (rec. p. 40), says: "the proceeding in bankruptcy was in accordance with the provision of the Act," and this implies that the bankrupt, as required by sec. 7, prepared, made oath to and filed in court within ten days after the adjudication a schedule of his property showing the amount and kind of same, etc., etc., and did all other things that were required of him by the Act, and as far as the record shows, there was never any complaint or objections to what he had done or failed to do in this respect.

## 2. *As to the period of limitation prescribed by the statute.*

Under sec. 14, sub-sec. b, p. (4), the acts that prevent a discharge are carefully limited, as to the time of the doing thereof, by the words, "*at any time subsequent to the first day of the four months, immediately preceding the filing of the petition.*"

By sub-sec. b, sec. 3, there is a general limitation of four months in respect to the acts of bankruptcy described in sec. 3, sub-sec. a, par. (1) and par. (1) of sub-sec. b, of said sec. 3, explains, with great particularity, how the four months limita-

tion is extended in respect to a fraudulent transfer or a general assignment, as acts of bankruptcy.

These are the only provisions of limitations in respect to the acts of bankruptcy and the grounds for refusing a discharge and it is a just interpretation of the statute to say that if it had been intended that the several periods of limitation were to be subject to extension and alteration, that intention would have been made clear.

The limitation of time provided for the benefit of the bankrupt in par. (4), sub-sec. b, of sec. 14, is rigidly fixed and cannot be extended by giving any forced, or strained meaning to the words, "transferred, removed, destroyed or concealed."

Petitioner fraudulently concealed a part of his property on 25th of October, 1907, made a general assignment for the benefit of his creditors to Robert James, trustee, on the 4th of November, 1907; some of the concealed goods were discovered on the 5th of January, 1908, and petitioner then revealed to his trustee, Robert James, the places where all the goods were hidden, and Robert James, trustee, recovered for the trust, all the goods that had been hidden, except a small portion thereof that had been stolen from the place of concealment without the knowledge of petitioner; the creditors filed their petition in involuntary bankruptcy on the 28th of February, 1908, against the petitioner here, and the trustee in bankruptcy, A. G. Ricard, received from the trustee Robert James, trustee, the entire estate, and the petitioner here, the bankrupt below, did everything that was required of him by the Bankrupt Act, and there was no concealment whatever from the trustee in bankruptcy, A. G. Ricard.

With great respect for said District Court, and Circuit Court of Appeals, it must be insisted that when they decided that the said concealment on the 25th of October, 1907, was a *continuous concealment*, they confounded the unlawful act with the *injurious results* of that act.

In *United States v. Clark Irvine*, 8th Otto, 450. (98 U. S., 450.)

By an indictment found in September, 1875, in the United States Circuit Court for the District of Minnesota, it was charged that the defendant on the 20th day of December, 1870, as the agent and attorney of Mrs. Berkley, wrongfully withheld from her the amount of her pension collected by defendant and continuously withheld it until the time of finding the indictment in September, 1875.

The defendant pleaded the statute of limitations of two

years, as a bar to the indictment and the Circuit Court refusing him the benefit of the bar on trial, certified to this Court, among other questions, the following:

(2) Is the crime a continuous one down to the time of finding the indictment?

(3) Does the statute of limitations constitute a bar to this prosecution, that indictment having been found September 15, 1875?

On appeal this Court after discussing what constitutes a withholding of a pension under the statute, further says:

"But whatever this may be which constitutes the criminal act of withholding, it is a thing which must be capable of proof to a jury, and which, when it once exists, renders the party liable to indictment.

"There is in this but one offense. When it is committed, the party is guilty and is subject to criminal prosecution, and from that time, also, the statute of limitations applicable to the offense begins to run.

"It is unreasonable to hold that twenty years after this he can be indicted for wrongfully withholding the money, and be put to prove his innocence after his receipt is lost, and perhaps the pensioner is dead; but the fact that his receipt of the money is matter of record in the pension office.

"He pleads the statute of two years, a statute which was made for such a case as this; but the reply is: You received the money. You have continued to withhold it these twenty years; every year, every month, every day, was a withholding, within the meaning of the statute.

"We do not so construe the Act. Whenever the act or series of acts necessary to constitute a criminal withholding of the money have transpired, the crime is complete, and from that day the statute of limitations begins to run against the prosecution.

"In the case before us, the judges certify that it appeared on the trial that the pensioner demanded her money of defendant on the 24th of December, 1870, and he refused to pay her, and had never paid her up to the finding of the indictment, September 15, 1875; that he requested the judge to instruct the jury to acquit him, because the offense was barred by the statute of limitations, which the Court refused to do.

"We think the statute, R. S., sec. 1044, was a bar; and we say in answer to the second question, that the crime, as shown in this case, was not a continuous one to the time of the indictment; and to the third, that the statute of limitations constitutes a bar to this prosecution."

In the case just cited, it was held that the statute of limitations began to run, as soon as the crime was completed and so, in the case at bar, when the petitioner had unlawfully made the concealment on the 25th of October, 1907, the offense was then complete and, no other act of concealing having been alleged against him, the only offense was committed on the 25th of October, at a time prior to and outside of the period prescribed by the statute, and petitioner is not thereby deprived of his right of discharge.

3. *As the aim and objects of the Bankruptcy Act and the application of the limitations, as to the time, therein contained.*

"The National Bankruptcy Act is remedial and should be interpreted reasonably and according to the fair import of its terms, with a view to effect its object and to promote justice."

*Blake, etc., v. Francis-Valentine Co.*, 89 Fed., 691.

"No one can become familiar with the bankruptcy law of 1898, without a settled conviction that the two dominant purposes of the framers of that Act, were: (1) the protection and discharge of the bankrupt; and (2) the distribution of the unexempt property which the bankrupt owned four months before the filing of the petition in bankruptcy against him, share and share alike, among his creditors.

"All the earlier sections of the Act are devoted to the security and relief of the bankrupt, and when the distribution of his property is reached, the provisions relating to it are drawn from the standpoint of the insolvent and not from that of his creditors. The rights and privileges of the bankrupt, and the equal distribution of his property dominate every provision, while the rights, wrongs, benefits and injuries of his creditors are always incidental, and secondary to these controlling purposes."

*Swarts v. Fourth National Bank*, 117 Federal, 1.

"A Federal statute has more than a local application and, until construed by the Supreme Court, cannot be said to have an established meaning."



*Calhoun G. M. Co. v. Ajax G. M. Co.*, 182 U. S., 499.

"When the bankrupt files his petition for a discharge the only facts pleadable in opposition thereto are those that show that under the provisions of sec. 14, he is not entitled to a discharge. In other words, it must be shown that he has committed some one of the offenses described; otherwise, the judge *shall* discharge the applicant."

*In Re: Marshall Paper Co.*, 102 Fed., 874.

"Shall" ought undoubtedly to be construed as meaning "must" for the purpose of sustaining or enforcing an existing right.

*Railroad v. Foley*, 94 U. S., 103.

Insofar as the creditors in this case seek to defeat the petitioner's plea of limitation under par. (4), sub-sec. b, sec. 14, of the Act, and to penalize him by preventing his discharge, the petitioner is entitled to all the benefits of the settled constructions of statutes of limitations and of penal or quasi penal statutes.

"Statutes of limitations are statutes of repose and should not be evaded by a forced construction."

*U. S. v. Hodge*, 13 Howard, 478.

"The statute of limitations is entitled to the same respect as other statutes and ought not to be explained away."

*Clementson v. Williams*, 8 Cranch, 72.

The statute set up by creditors is undoubtedly penal and it is a well settled rule of law that penal statutes are to be construed strictly.

*U. S. v. Hall*, 10 U. S., 171.

*American Fur Co. v. United States*, 31 U. S., 364.

*Johnson v. Southern Pacific Co.*, 117 Fed., 462.

*United States v. Morrissey*, 32 Fed., 147.



This rule of strict construction applies also to all statutes which impose as punishment any penalties pecuniary or otherwise.

*Farmers Natl. Bank v. Deering*, 91 U. S., 29.

And such statutes ought not to be extended beyond their obvious meaning.

*United States v. Willberger*, 18 U. S., 76.

*United States v. Huggett*, 40 Fed., 634.

*United States v. Garrettson*, 42 Fed., 22.

Where there is no ambiguity there is no room for construction.

*United States v. Willberger, supra.*

"Moreover, if there was really any fraud, in the transaction, it took place more than four months prior to the proceedings in bankruptcy and it is only where there has been a fraudulent transfer of property within that period, that a discharge is barred."

In Re: Brumbaugh, 128 Federal, 973.

## IX.

And your petitioner further avers that the present case is one in which it is proper for this Court to issue a writ of *certiorari*, for the following reasons, among others:

(1) Because the question, raised herein, of "a continuous concealment" under the Bankrupt Act has never been passed upon by this Court.

(2) Because the application of the statutory limitation of time in this case by the said Circuit Court of Appeals is in contravention of the law, as determined by this Court in the aforesaid case of *United States versus Clark Irvine*, 98 U. S., 450.

(3) Because the public interests require the decision of this Court upon the question of law involved herein, as it grows out of the Bankruptcy Act, of universal application throughout the United States.

Wherefore your petitioner prays that this Honorable Court will be pleased to grant a writ of *certiorari* in this case to the

said Circuit Court of Appeals for the Fourth Circuit, to bring up this case to this Honorable Court and that the same may be heard along with petitioner's aforesaid appeal herein for such proceedings therein, as this Honorable Court may seem just.

JOHN L. JAMES,  
Petitioner.

H. L. STEVENS,  
HENRY R. MILLER,  
Attorneys for Petitioner.

State of North Carolina,  
Eastern District of North Carolina.

John L. James, petitioner, being duly sworn, says that the foregoing petition has been read to me and the statements of fact therein contained are true to the best of my knowledge, information and belief.

JOHN L. JAMES,

Subscribed and sworn to before me this 22nd day of May, 1911.

JNO. W. GARLAND,  
Notary Public.  
Com. expires Oct. 11, 1912.

I hereby certify that I have examined the foregoing petition and in my opinion the petition is well founded and that the case is one in which the prayer of the petitioner should be granted by this Court.

SAMUEL A. ANDERSON,  
of Counsel for Petitioner.